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UNITED STATES OF AMERICA.

A MANUAL

OF THE

MINING LAWS

—OF—

THE UNITED STATES,

COLORADO, NEW MEXICO AND ARIZONA.

CONTAINING

STATUTES COMPLETE, WITH THE LATEST AMENDMENTS,
DECISIONS OF THE COURTS AND LAND OFFICE,
NOTES, FORMS, DIAGRAMS SUGGESTIONS, Etc.

Prepared with Special Reference to the Use of Miners and Prospectors.

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SECOND EDITION WITH SUPPLEMENT REVISED TO DATE,

—BY—

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CONTENTS.

PART I.

PAGES.

UNITED STATES STATUTES—

Lodes and Placers, - - - 9 to 41
Coal Lands, - - - - 41 to 44
Timber on Mineral Lands, - 44 to 47

PART II.

COLORADO STATUTES—

Lodes, - - - - - 49 to 59
Placers, - - - - - 59 to 63
Water Rights, Easements, - - 63 to 64
Miscellaneous Laws, - - 64 to 70
Miners' Lien, - - - - 70 to 71
Penal Laws, - - - - 71 to 73
Stock Companies, - - - 73 to 78

PART III.

CONVEYANCES, - - - - 79 to 84
LAWS OF ARIZONA, - - - - 84 to 92
LAWS OF NEW MEXICO, - - - 93 to 95
DISTRICT LAWS, - - - - 95 to 97
HOW TO PROSPECT, - - - 98 to 101
COURTS OF COLORADO, - - - 103 to 108

CONTRACTIONS.

U. S. STAT.—Revised Statutes of the United States, 1878.

COL. STAT.—General Laws of Colorado, 1877.

C. L. O.—Copp's Land Owner.

C. M. D.—Copp's Mining Decisions.

LAW REPORTER.—Colorado Law Reporter, by James A. Dawson.

SICKELS.—Sickel's Mining Laws of the United States.

The dates indicate when the statute took effect.

PART I.

THE MINING LAWS OF THE UNITED STATES.

FROM THE REVISED STATUTES, 1878.

☞ *The Statutes are printed in the larger type—author's notes in small type.*

Mineral Lands Reserved from Sale.

Section 2318. In all cases, lands valuable for minerals shall be reserved from sale, except as otherwise expressly directed by law.—*July 4, 1866.*

Mineral Lands are such as are more valuable for mining than for agricultural purposes. There are two classes of mineral lands, viz: Lodes and Placers.

A Lode is a vein or body of ore *in place*.

See *Rock in Place*.

Placers include all other forms of mineral deposits.

Sec. 2329.

Mineral Lands open to Exploration and Purchase.

Sec. 2319. All valuable mineral deposits in lands belonging to the United States, both surveyed and unsurveyed, are hereby declared to be free and open to exploration and purchase, and the lands in which they are found to occupation and

purchase, by citizens of the United States and those who have declared their intention to become such, under regulations prescribed by law, and according to the local customs or rules of miners in the several mining-districts, so far as the same are applicable and not inconsistent with the laws of the United States.—*May 10, 1872.*

The First Act of Congress relating to mining locations, was passed in 1866. The first placer law was enacted in 1870.

The Possessory Rights of claimants were first recognized by Act of Congress in 1865, as follows:

SEC. 910. No possessory action between persons, in any court of the United States, for the recovery of any mining title, or for damages to any such title, shall be effected by the fact that the paramount title to the land in which such mines lie is in the United States; but each case shall be adjudged by the law of possession.—*Feb. 27, 1865.*

See Miscellaneous Laws, Sec. 2131.

Mineral Deposits.—Under the head of valuable mineral deposits in this section (2319) are included diamonds, slate, fire-clay, borax, mica, amber, petroleum, and the common and precious metals. Land Office Decisions, Sickels, p. 485.

Agricultural Entry.—Land discovered to contain valuable mineral deposits, after the same has been entered as agricultural, but before patent has issued, is subject to mineral location and entry, and the agricultural entry will be cancelled. Sickels, 449.

Reservation Lands.—Mineral Lands in Indian or Military Reservations are not subject to location. Should such reservations be removed or revert to the government, claims previously located should be re-located. Sickels, pp. 519–20.

District Laws.—Prior to 1866 mining rights were regulated by state or territorial laws and the local rules and customs of the

miners. District laws were published on the county records, and when not in conflict with any state or territorial statute were recognized and enforced by the courts; see Laws Col., Sec. 2127, (Miscellaneous.) But in Colorado they are now practically obsolete, except with respect to old locations and for the purpose of locating and describing claims, the state and federal laws being so comprehensive as to leave little room for them.

A form of district rules and organization of mining districts is given under Laws of New Mexico.

In Colorado all local rules seem to be abolished by the Act of 1868; see Col. Stat., Sec. 2127. (Miscellaneous.)

Mining Districts vary in extent of area, and their boundaries have no uniformity. In describing unsurveyed lands they take the place of townships, sections, etc.

Location of Claims—Length and Width of Lode Claims—Parallel End Lines.

Sec. 2320. Mining-claims upon veins or lodes of quartz or other rock in place bearing gold, silver, cinnabar, lead, tin, copper, or other valuable deposits, heretofore located, shall be governed as to length along the vein or lode by the customs, regulations, and laws in force at the date of their location. A mining-claim located after the tenth day of May, 1872, whether located by one or more persons, may equal, but shall not exceed, one thousand five hundred feet in length along the vein or lode; but no location of a mining-claim shall be made until the discovery of the vein or lode within the limits of the claim located. No claim shall extend more than three hundred feet on each side of the middle of the vein at the surface, nor shall any claim be limited by any mining regula-

tion to less than twenty-five feet on each side of the middle of the vein at the surface, except where adverse rights existing on the tenth day of May, 1872, render such limitation necessary. The end-lines of each claim shall be parallel to each other. —*May 10, 1872.*

Col. Stat., Sec. 1811 *et al.*

A Mining Claim is defined by the United States Supreme Court as "the possessory right to explore and work the mine under the existing laws and regulations on the subject."

4 C. L. O., p. 58.

A Vein or Lode is a body of mineral or mineral bearing rock within defined boundaries in the general mass of the mountain.

Iron Silver Mining Co. *vs.* Cheeseman et al. Law Reporter, vol. 1. p. 461.

The terms **Vein, Lode** or **Ledge,** are used synonymously, or nearly so, in law.

Law of Possession—Discovery.—It is provided in the foregoing section that "no location of a mining claim shall be made until the discovery of the vein or lode within the limits of the claim located." But it is a common custom to stake out and locate claims before such discovery, and, according to a recent decision of the United States Circuit Court, such a location gives to the claimant a possessory title to the full extent of the claim, and may be held by him for an indefinite period, while he remains in occupation of it, searching for mineral. But to preserve his right to the claim he must not suffer another to stake a claim or prospect within his boundaries prior to a discovery by him.

The decision in full (by Judge Miller) is as follows:

"This cause is submitted on an agreed state of facts to the effect that the ground in controversy is covered by the surface lines of the Orion claim, located by plaintiff, and also of the Pendery claim located by defendant; that both locations are regular as to form; that the Orion was first located, surveyed and staked; that the locators have steadily prosecuted work in the devel-

opment thereof, and have discovered mineral in place. That the discoverers of the Pendery, located subsequently to the Orion and while the locators of the latter were in possession thereof, also prosecuted work and discovered mineral in place, before the discovery by the locators of the Orion. The question submitted to the Court is this: Can prospectors on the public mineral domain acquire any right in which the law will protect them prior to the discovery of mineral in rock in place? And if so, can plaintiffs, being prior locators, recover against defendants, who first discovered mineral on the ground in controversy?

It is the opinion of the Court that inasmuch as the plaintiffs allowed the defendants to enter upon their claim, and within their boundaries, and there sink a shaft, in which they discovered mineral in rock in place before a discovery by plaintiffs, and make location thereof without protest, the defendants now have the better right. But the plaintiffs might have protected their actual possession of their entire claim, by proper legal proceedings prior to the discovery of mineral by the defendants, or by either party.

A prospector on the public mineral domain may protect himself in the possession of his *pedis possessionis* while he is searching for mineral. His possession so held is good as a possessory title against all the world, except the government of the United States. But if he stands by and allows others to enter upon his claim and first discover mineral in rock in place, the law gives such first discoverer a title to the mineral against which the mere possession of the surface cannot prevail, and in this case judgment must be for the defendants."

Crossman et al. *vs.* Pendery et al., U. S. Circuit Court for Colorado. Law Reporter, Vol. 1, p. 496.

This decision is one of great importance, being contrary to the interpretation of the law which has heretofore commonly been received, and seemingly in direct conflict with previous rulings of Judge Hallet in the same Court, as expressed in his charge to the jury in the case of Zollar's and Highland Chief Consolidated Mining Co. *vs.* Seth Evans, Oct. Term, 1880, as follows:

"On the public domain of the United States a miner may *hold the place in which he may be working* against all others having no better right. But when he asserts title to a full claim of 1500

feet in length and 300 feet in width, he must prove a lode extending throughout the claim." [Law Reporter, Vol. 1, p. 217.

Judge Miller's decision, being the latest utterance of the Court upon this question, is now the law. It is difficult to reconcile the decision with the provision of the statute before quoted, that "no location of a mining claim shall be made until the discovery of the vein or lode within the limits of the claim located."

Perhaps the construction is that no location shall be *completed* by record of the location certificate, until such discovery, and that the posessory right which the claimant has prior to that, is something outside of this statute and which is allowed by a former law.

See Ante, Sec. 910.

County Legislation.—In Colorado the area of lode claims allowed by law is not uniform in all counties; being in the older counties of Gilpin, Clear Creek, Boulder and Summit, 1,500 by 150, and in others 1,500 by 300 feet.

See Col. Stat., Secs. 1811 and 1812.

Rock in Place.—"Rock in Place" is held to mean "such as lies in a fixed position in the general mass of country rock," as distinguished from loose deposits, having no wall rocks.

The latter can be made the basis of a placer claim only.

Stevens and Leiter *vs.* Williams et al; Van Zandt *vs.* The Argentine Mining Co., June 16, 1881; Law Reporter, vol. 1, p. 525.

Location by a Minor.—A location made by a minor is valid.

7 C. L. O. 179.

On Sunday.—Locations made on Sunday are valid, unless contrary to some local law.

8 C. L. O., p. 3.

Proof of Citizenship.

Sec. 2321. Proof of citizenship, under this chapter, may consist, in the case of an individual, of his own affidavit thereof; in the case of an association of persons unincorporated, of the affidavit of their authorized agent, made on his own knowledge, or upon information and belief; and in the

case of a corporation organized under the laws of the United States, or of any state or territory thereof, by the filing of a certified copy of their charter or certificate of incorporation.—*May 10, 1872.*

No Distinction of Sex.—Mining claims may be located and held by both males and females, upon compliance with the laws.

4 C. L. O. 179.

Aliens cannot locate mining claims, but those who have declared their intention to become citizens, stand upon the same footing as citizens.

Declaration of intention, filed after location, entitles one to make application for patent.

Nature and Extent of Title, Boundaries.

Sec. 2322. The locators of all mining locations heretofore made, or which shall hereafter be made, on any mineral vein, lode, or ledge, situated on the public domain, their heirs and assigns, where no adverse claim exists, on the tenth day of May, 1872, so long as they comply with the laws of the United States, and with state, territorial and local regulations not in conflict with the laws of the United States governing their possessory title, shall have the exclusive right of possession and enjoyment of all the surface included within the lines of their locations, and of all veins, lodes and ledges throughout their entire depth, the top or apex of which lies inside of such surface-lines extended downward vertically, although such veins, lodes, or ledges may so depart from a perpendicular in their course downward as to extend outside the vertical side-lines of such surface locations; but their right

of possession to such outside parts of such veins or ledges shall be confined to such portions thereof as lie between vertical planes drawn downward as above described, through the end-lines of their locations, so continued in their own direction that such planes will intersect such exterior parts of such veins or ledges; and nothing in this section shall authorize the locator or possessor of a vein or lode which extends in its downward course beyond the vertical lines of his claim, to enter upon the surface of a claim owned or possessed by another.—*May 10, 1872.*

See Col. Stat., Sec. 1819.

Dip.—The Dip of a vein is its departure from the perpendicular in its course downward.

Strike.—The Strike of a vein is its direction in a horizontal course.

The Top or Apex is the end, or edge, or terminal point of the lode nearest the surface of the earth, without regard to the depth from the surface, at which it may be found. If found at any depth, and the locator can define on the surface the area which will enclose it, the lode may be held by such location.

The law goes upon the theory that all veins are more or less vertical in the earth, and must be applied to veins that are nearly horizontal. Iron *vs.* Luella Mine, May, 1880. Law Reporter, vol. 1, p. 16.

Dip.—To entitle a claimant to follow a vein on its dip, beyond the side lines of his claim, he must have the apex of the vein within the boundaries of his claim; the vein must be continuous and *in place*, and can be followed only so far lengthwise as the top or apex has been developed on said vein.

Iron *vs.* Luella Mine, Law Reporter, vol. 1, p. 16. Iron Silver Mining Co. *vs.* Cheeseman et al., May 27, 1881, charge to jury by Hallett, J, Law Reporter, vol. 1, p. 461.

A vein lying at any angle between a perpendicular and a horizontal position has a departure from the perpendicular, within the meaning of the statute, and may be followed on its dip.

Same case.

Location on Dip.—Although a location be made along the apex of the vein, it cannot prevail against a senior location made on the dip of the vein.

[Adelaide *vs.* The Argentine Mining Co., U. S. Circuit Court, Colo., charge to jury by Judge Hallett. Law Reporter, vol. 1, p. 525.

"If the ore body is continuous, to the extent that it may maintain that character, it is *in place*.

The strength of the vein, whether it is very thin or very thick, is not material. But if the territory is so broken up, jumbled and the several parts so mixed together that there is nothing continuous, there can be no lode extending from one claim to the other."

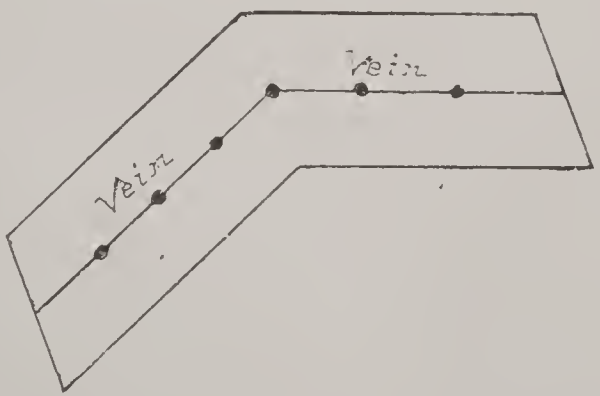
Same case.

Form of Location.—The law presumes that the vein or lode lies in nearly a straight line. The location, therefore, should be substantially in the form of a parallelogram.

Col. Stat., Sec. 1816., and diagram.

Upon a survey which varies materially from that form, a patent will not be granted, unless it be shown by actual exploration and development, appearing in the drawings, that the location follows the vein.

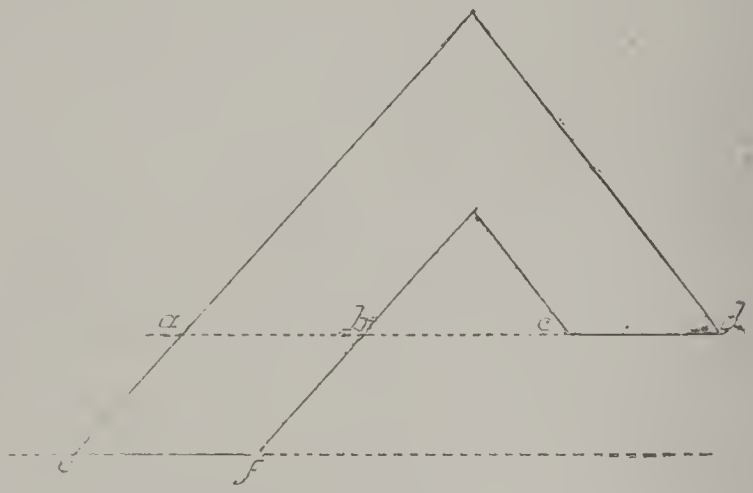
Sickels, p. 36.



Must be contained between Parallel End Lines.—The land office also refused to grant a patent for a claim which did not lie

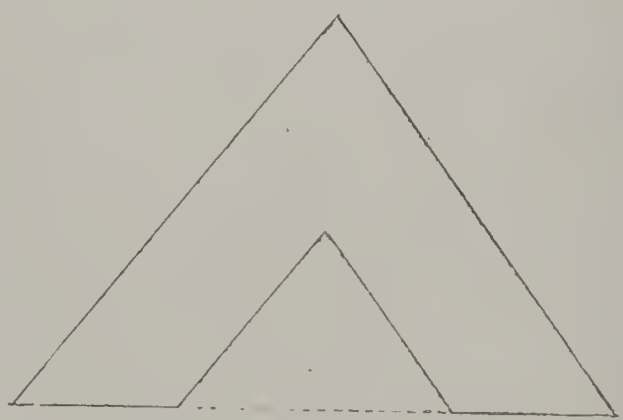
between parallel end lines, indefinitely extended, on the ground that the statute does not contemplate such a location.

Thus,



That part of the location above the line *a b c d*, not being within the end lines *e f* and *c d* as extended, the location is bad.

Sickels, 39.



For the same reason, a location in the form of the above figure is bad, since the end lines when extended include nothing.

Sickels, p. 40,

Discovery Within Another's Claim.—Ground duly located and staked cannot be entered for prospecting purposes; and a location based upon a discovery within the boundaries of another's claim is void. Sickels, p. 48 and cases cited.

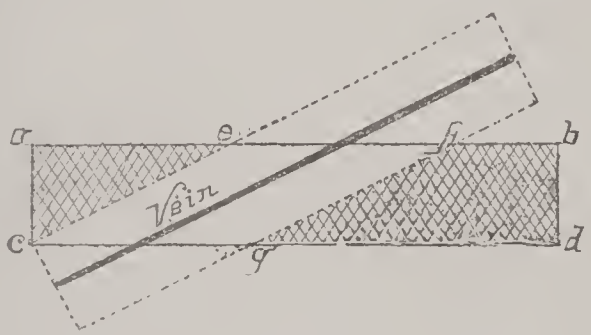
Vein Confined to Side Lines.—"A miner cannot follow his lode when, in its general strike or course, it departs from the ver-

tical side lines. After its departure, it is the subject of location by whomsoever it may be discovered." [4 Colo., 112.

The Act of 1866, which is repealed, allowed the miner to follow his vein wherever it should lead for the length of a claim, regardless of its boundaries.

The Location of Veins, under the present law, must be along the vein, and the side lines must be *equi*-distant from the centre of the vein. Consequently, if, at any point along the side lines, the vein departs from the surface boundaries, the location beyond such point is "defeasible if not void." 3 Colo., 533.

Thus,



If the figure *a b c d* represent the location, only so much of the claim as lies within the space *e f c g* can be held. The dotted lines indicate the true location.

Vein Must be in Centre of Location.—Or if the vein is not found along the centre of location lengthwise, so that the distance to either side line is greater than half the width, the excess cannot, in Colorado, be held. The presumption, however, is that the vein lies along the middle of the claim when the location, in other respects, has been properly made, and in a contested case the burden of proof would be upon him who denied that the vein was properly located.

Not Applicable to Patented Claims.—But these rules do not apply to patented claims.

Angles and Variations.—Notwithstanding the location certificate commonly claims the vein with all its dips, variations and angles, such angles or variations as take the vein beyond the side lines cannot be followed under the present law; under the law of 1866 they could be. The width which the law allows to a claim

is intended to cover all probable errors in the course of the vein; and the law allows three months after discovery in which to complete the location. This time should be employed in determining as nearly as possible the true course of the vein.

See Col. Stat., Sec. 1813.

The Course of a True Vein is usually northerly and southerly.

Errors of Location may be corrected by a relocation.

See Col. Stat., Sec. 1823.

End Lines.—In no case can the vein be followed beyond the end lines of the claim. See Col. Stat., Secs. 1819–1820.

Tunnel Sites.

Sec. 2323. Where a tunnel is run for the development of a vein or lode, or for the discovery of mines, the owners of such tunnel shall have the right of possession of all veins or lodes within three thousand feet from the face of such tunnel on the line thereof, not previously known to exist, discovered in such tunnel, to the same extent as if discovered from the surface; and locations on the line of such tunnel, of veins or lodes not appearing on the surface, made by other parties after the commencement of the tunnel, and while the same is being prosecuted with reasonable diligence, shall be invalid; but failure to prosecute the work on the tunnel for six months shall be considered as an abandonment of the right to all undiscovered veins on the line of such tunnel.—*May 10, 1872.*

Construction by Land Office.—The effect of this is simply to give the proprietors of a mining tunnel, run in good faith, the possessory right to 1500 feet of any blind lodes, cut, discovered or intersected by such tunnel, which were not previously known to exist,

within 3,000 feet from the face or point of commencement of such tunnel, and to prohibit other parties, after the commencement of the tunnel, from prospecting for and making locations of lodes on the line thereof, and within said distance of 3,000 feet, unless such lodes appear upon the surface, or were previously known to exist. Land Office Rules, 21.

Width.—The line of a tunnel is the width thereof, and no more; this line must be marked on the surface by stakes placed along the same, from the commencement to the terminus of the tunnel, in the manner applicable to the location of veins or lodes. L. O. Rules, 23. C. M. D. 144.

No patent can issue for a vein or lode without surface ground. The survey of a vein or lode discovered in a tunnel can not properly be made until the apex thereof has been ascertained by sinking a shaft, or by following it from the point of discovery. Sickels, p. 368.

Location Notice.—The proprietors of a mining tunnel are required to give proper notice of their tunnel location, by erecting a substantial post, board or monument at the face or point of commencement thereof, upon which should be posted a notice in substantially the following form:

THE ——— TUNNEL SITE.

Located by ——; date, ——; course, ——; 3,000 feet, to blazed pine tree (or other land-mark); height of tunnel, —— feet; width, —— feet.

Record.—A certificate signed by the locators, and specifying the place of commencement and termination, should be recorded at the same time. Colo. Laws, sec. 1800. (Lodes and Placers.)

Cannot be Patented.—Tunnel locations cannot be patented, but lodes discovered in running a tunnel may be. C. M. D. 193.

Location of Veins Cut.—When in running the tunnel a lode is struck, the surface ground which overlies the apex must be ascertained and the claim then duly located, as if discovered from the surface. 5 C. L. O. 130.

Judicial Construction.—"*The line of a tunnel* is the width thereof and no more; and upon *this line* only is prospecting for

blind lodes prohibited, while the working of the tunnel is in progress; and the right is granted to the tunnel owners to 1,500 feet of each blind lode, not previously known to exist, which may be discovered in such tunnel, but other parties are in no way debarred from prospecting for blind lodes or running tunnels, so long as they keep without the line of the tunnel, as herein defined; the said line being required by regulations to be marked on the surface by stakes or monuments, placed along the same from the face or point of commencement to the terminus of the tunnel line aforesaid. When a lode is struck or discovered for the first time, by running a tunnel, the tunnel owners have the option of recording their claim of 1,500 feet all on one side of the point of discovery or intersection, or partly upon one and partly upon the other side thereof; but in no case can they so record a claim as to absorb the actual or constructive claim or possession of other parties, on a lode which has been discovered and claimed outside the line of the tunnel before the discovery thereof in the tunnel."

Sickels, p. 365.

Corning Tunnel Co. *vs.* Pell. 4 Colo. 507.

District Rules, Annual Labor, Co-Owners, Amendments.

Sec. 2324. The miners of each mining-district may make regulations not in conflict with the laws of the United States, or with the laws of the state or territory in which the district is situated, governing the location, manner of recording, and amount of work necessary to hold possession of a mining-claim, subject to the following requirements: The location must be distinctly marked on the ground so that its boundaries can be readily traced. All records of mining-claims hereafter made shall contain the name or names of the locators, the date of the location, and such a description of the claim or

claims located by reference to some natural object or permanent monument as will identify the claim. On each claim located after the 10th day of May, 1872, and until a patent has been issued therefor, not less than one hundred dollars' worth of labor shall be performed or improvements made during each year. On all claims located prior to the 10th day of May, 1872, ten dollars' worth of labor shall be performed or improvements made, by the 10th day of June, 1874, and each year thereafter, for each one hundred feet in length along the vein until a patent has been issued therefor; but where such claims are held in common, such expenditure may be made upon any one claim; and upon a failure to comply with these conditions, the claim or mine upon which such failure occurred shall be open to relocation in the same manner as if no location of the same had ever been made, provided that the original locators, their heirs, assigns, or legal representatives, have not resumed work upon the claim after failure and before such location. Upon the failure of any one of several co-owners, to contribute his proportion of the expenditures required hereby, the co-owners who have performed the labor or made the improvements may, at the expiration of the year, give such delinquent co-owner personal notice in writing, or notice by publication in the newspaper published nearest the claim, for at least once a week for ninety days, and if at the expiration of ninety days after such notice

in writing or by publication such delinquent should fail or refuse to contribute his proportion of the expenditure required by this section, his interest in the claim shall become the property of his co-owners who have made the required expenditures.

(AMENDMENT A.)

That section 2324 of the Revised Statutes be, and the same is hereby amended, so that where a person or company has or may run a tunnel for the purpose of developing a lode or lodes, owned by said person or company, the money so expended in said tunnel shall be taken and considered as expended on said lode or lodes, whether located prior to or since the passage of said act; and such person or company shall not be required to perform work on the surface of said lode or lodes in order to hold the same, as required by said act.—*Feb. 11, 1875.*

(AMENDMENT B.)

That section 2324 of the Revised Statutes of the United States be amended by adding the following words: *Provided*, that the period within which the work required to be done annually on all unpatented mineral claims shall commence on the 1st day of January succeeding the date of location of such claim, and this section shall apply to all claims located since the 10th day of May, A. D. 1872.—*Jan. 22, 1880.*

This amendment (B.) settles a hitherto doubtful and much disputed question.

Upon a claim located on the 1st day of June, 1881, the first annual labor or assessment must be performed some time between Jan. 1st, 1882, and Dec. 31st, 1882.

Location Work.—The work done in making the location would not count as a part of the first annual assessment.

7 C. L. O. p. 130.

After Entry of Application for Patent no annual labor is required, since the patent, when issued, relates back to the date of entry.

Neglect to do the annual labor as required by law leaves a claim open to relocation, but does not, of itself, work a forfeiture.

Computation of Labor.—The value of labor and improvements upon any claim are to be computed from the current prices of labor and materials.

Forfeiture by Co-owner.—Where more than the annual assessment ($100) has been expended on a claim a co-owner is only required to pay his proportion thereof to save a forfeiture.

Where additional expenses have been incurred on the property by a co-owner with the others' knowledge and consent, the latter's share of the expenses is to be recovered in another way, by suit.

Kohn *vs.* Central Smelting Co. et al. U. S. Supreme Court. 8 C. L. O., 22.

Co-owners are not Copartners where no partnership agreement exists between them. They are tenants in common, and the interest of each one, however small, entitles him to an equal voice in the control of the property. For this reason it is usually better for owners to enter into some agreement as to the management of the property, or to incorporate a company.

See Charles *vs.* Eschleman, Col. Supreme Court. Decision by Beck, J., January, 1880.

Relocation by one of several owners.—Where several owners have all neglected to do the annual assessment and the claim becomes open to relocation as abandoned property, a new location by one of the former owners would not enure to the benefit of the others.

Strang *vs.* Ryan, 46 Cal., p. 43. 8 C. L. O., 3.

Patents.

Any person, association or corporation, having located a mining claim, having complied with the laws respecting the same and having expended the sum of $500 in labor or improvements upon said claim, may obtain a Government patent therefor in the manner prescribed by sections 2325, 2326, 2327 and 2328 following.

In applying for a patent the services of a competent surveyor and attorney are required.

Application for Patents.

Sec. 2325. A patent for any land claimed and located for valuable deposits may be obtained in the following manner: Any person, association, or corporation authorized to locate a claim under this chapter, having claimed and located a piece of land for such purposes, who has, or have, complied with the terms of this chapter, may file in the proper land-office an application for a patent, under oath, showing such compliance, together with a plat and field notes of the claim or claims in common, made by or under the direction of the United States Surveyor-General, showing accurately the boundaries of the claim or claims, which shall be distinctly marked by monuments, on the ground, and shall post a copy of such plat, together with a notice of such application for a patent, in a conspicuous place on the land embraced in such plat, previous to the filing of the application for a patent, and shall file an affidavit of at least two persons that such notice has been duly posted, and shall file a copy of the notice in such land-office, and shall thereupon be entitled to

a patent to the land, in the manner following: The Register of the Land-Office, upon the filing of such application, plat, field notes, notices, and affidavits, shall publish a notice that such application has been made, for the period of sixty days, in a newspaper to be by him designated as published nearest to such claim; and he shall also post such notice in his office for the same period. The claimant, at the time of filing this application, or at any time thereafter, within the sixty days of publication, shall file with the Register a certificate of the United States Surveyor-General that five hundred dollars' worth of labor has been expended or improvements made upon the claim by himself or grantors; that the plat is correct, with such further description by such reference to natural objects or permanent monuments as shall identify the claim, and furnish an accurate description, to be incorporated in the patent. At the expiration of sixty days of publication the claimant shall file his affidavit, showing that the plat and notice have been posted in a conspicuous place on the claim during such period of publication. If no adverse claim shall have been filed with the Register and the Receiver of the proper land-office at the expiration of the sixty days of publication, it shall be assumed that the applicant is entitled to a patent, upon the payment to the proper officer of five dollars per acre, and that no adverse claim exists; and thereafter no objection from third parties to the issu-

ance of a patent shall be heard, except it be shown that the applicant has failed to comply with the terms of this chapter.—*May 10, 1872.*

AMENDMENT.

Provided, that where the claimant for a patent is not a resident of, or within the land district wherein the vein, lode, ledge or deposit sought to be patented is located, the application for patent and the affidavits required to be made may be made by his, her or its authorized agent, where said agent is conversant with the facts sought to be established by said affidavits; *and, provided*, that this section shall apply to all applications now pending for patents to mineral lands.—*January 22, 1880.*

ADVERSE CLAIM, PROCEEDINGS ON.

SEC. 2326. Where an adverse claim is filed during the period of publication, it shall be upon oath of the person or persons making the same, and shall show the nature, boundaries, and extent of such adverse claim, and all proceedings, except the publication of notice and making and filing of the affidavit thereof, shall be stayed until the controversy shall have been settled or decided by a court of competent jurisdiction, or the adverse claim waived. It shall be the duty of the adverse claimant, within thirty days after filing his claim to commence proceedings in a court of competent jurisdiction, to determine the question of the right of possession, and prosecute the same with reasonable diligence to final judgment; and a failure so

to do shall be a waiver of his adverse claim. After such judgment shall have been rendered, the party entitled to the possession of the claim, or any portion thereof, may, without giving further notice, file a certified copy of the judgment-roll with the Register of the Land-Office, together with the certificate of the Surveyor-General that the requisite amount of labor has been expended or improvements made thereon, and the description required in other cases, and shall pay to the Receiver five dollars per acre for his claim, together with the proper fees, whereupon the whole proceedings and the judgment-roll shall be certified by the Register to the Commissioner of the General Land-Office, and a patent shall issue thereon for the claim, or such portion thereof as the applicant shall appear, from the decision of the Court, to rightly possess. If it appears from the decision of the Court that several parties are entitled to separate and different portions of the claim, each party may pay for his portion of the claim, with the proper fees, and file the certificate and description by the Surveyor-General, whereupon the Register shall certify the proceedings and judgment-roll to the Commissioner of the General Land-Office, as in the preceding case, and patents shall issue to the several parties according to their respective rights. Nothing herein contained shall be construed to prevent the alienation of the title conveyed by a patent for a mining-claim to any person whatever.—*May 10, 1872.*

Survey.

Sec. 2327. The description of vein or lode claims, upon surveyed lands shall designate the location of the claim with reference to the lines of the public surveys, but need not conform therewith; but where a patent shall be issued for claims upon unsurveyed lands, the surveyor-general, in extending the surveys, shall adjust the same to the boundaries of such patented claim, according to the plat or description thereof, but so as in no case to interfere with or change the location of any such patented claim.—*May 10, 1872.*

Pending Applications.

Sec. 2328. Applications for patents for mining-claims under former laws now pending, may be prosecuted to a final decision in the general land office; but in such cases where adverse rights are not affected thereby, patents may issue in pursuance of the provisions of this chapter, and all patents for mining-claims upon veins or lodes heretofore issued, shall convey all the rights and privileges conferred by this chapter, where no adverse rights existed on the 10th day of May, 1872.—*May 10, 1872.*

Correction of Errors.—An error of description in a patent will be corrected by issue of a new patent. C. M. D., 41.

Where patent was inadvertently issued, or procured through fraud, it will be cancelled. C. L. O., 2.

Procedure.—In such case the General Land Office will ask the Department of Justice that the party injured be permitted to

use the name of the United States in the prosecution of proper proceedings in the Courts. C. M. D., 213.

See also note to Sec. 2333. (Judge Hallett's decision.)

Third Parties.—But these rules would not apply to the injury of *bona fide* purchasers of patented claims where the patent on its face is regular.

Purchase after entry.—Where a party becomes a purchaser after date of entry the patent will issue to such purchaser.

C. M. D., 163.

Intersecting Patents.—Where patent issues for a mining claim which crosses one already patented the surface ground in the interference is excepted from the second patent, but the subsequent patentee has the right to his lode for the distance patented with the proviso that the ore at the space of intersection shall belong to the prior location. 2 C. L. O., 178.

PLACERS.

SUBJECT TO ENTRY.

SEC. 2329. Claims usually called "placers," including all forms of deposit, excepting veins of quartz or other rock in place, shall be subject to entry and patent, under like circumstances and conditions, and upon similar proceedings, as are provided for vein or lode claims; but where the lands have been previously surveyed by the United States, the entry in its exterior limits shall conform to the legal sub-divisions of the public lands.—*July 9, 1870.*

See Col. Stat. (Placers.)

PLACERS ON SURVEYED LANDS. JOINT ENTRY.

SEC. 2330. Legal subdivisions of forty acres may be subdivided into ten-acre tracts; and two or more persons, or associations of persons, having

contiguous claims of any size, although such claims may be less than ten acres each, may make joint entry thereof; but no location of a placer-claim, made after the 9th day of July, 1870, shall exceed 160 acres for any one person or association of persons, which location shall conform to the United States surveys; and nothing in this section contained shall defeat or impair any *bona fide* pre-emption or homestead claim upon agricultural lands, or authorize the sale of the improvements of any *bona fide* settler to any purchaser.—*July 9, 1870.*

Placers on Unsurveyed Lands.

Sec. 2331. Where placer-claims are upon surveyed lands, and conform to legal subdivisions, no further survey or plat shall be required, and all placer-mining claims located after the tenth day of May, 1872, shall conform as near as practicable with the United States system of public land-surveys, and the rectangular subdivisions of such surveys, and no such location shall include more than twenty acres for each individual claimant; but where placer-claims cannot be conformed to legal subdivisions, survey and plat shall be made as on unsurveyed lands; and where by the segregation of mineral lands in any legal subdivision a quantity of agricultural land less than forty acres remains, such fractional portion of agricultural land may be entered, by any party qualified by law, for homestead or pre-emption purposes.—*May 10, 1872.*

Location and size of.—Two or more persons having contiguous claims may make joint entry thereof, but no placer claim shall exceed 160 acres, and no location shall include more than twenty acres for each individual claimant.

TITLE ACQUIRED UNDER STATUTE OF LIMITATIONS.

SEC. 2332. Where such person or association, they or their grantors, have held and worked their claims for a period equal to the time prescribed by the statute of limitations for mining-claims of the state or territory where the same may be situated, evidence of such possession and working of the claims for such period shall be sufficient to establish a right to a patent thereto under this chapter, in the absence of any adverse claim; but nothing in this chapter shall be deemed to impair any lien which may have attached in any way whatever to any mining-claim or property thereto attached prior to the issuance of a patent.—*July 9, 1870.*

PLACER CONTAINING LODE.

SEC. 2333. Where the same person, association, or corporation, is in possession of a placer-claim, and also a vein or lode included within the boundaries thereof, applications shall be made for a patent for the placer-claim, with the statement that it includes such vein or lode, and in such case a patent shall issue for the placer-claim subject to the provisions of this chapter, including such vein or lode, upon the payment of five dollars per acre for such vein or lode claim, and twenty-five feet of surface on each side thereof. The remainder of

the placer-claim, or any placer-claim not embracing any vein or lode claim, shall be paid for at the rate of two dollars and fifty cents per acre, together with all costs of proceedings; and where a vein or lode, such as is described in section 2320, is known to exist within the boundaries of a placer-claim, an application for a patent for such placer-claim, which does not include an application for the vein or lode claim, shall be construed as a conclusive declaration that the claimant of the placer-claim has no right of possession of the vein or lode claim; but where the existence of a vein or lode in a placer-claim is not known, a patent for the placer-claim shall convey all valuable mineral and other deposits within the boundaries thereof.—*May 10, 1872.*

Proof.—Parties making entry of a placer claim must make satisfactory proof that it does not contain any known vein or lode of quartz, or other rock in place, bearing valuable minerals.

C. M. D. 226.

Lode within Placer.—If it can be shown that a placer claim embraces a lode or vein, which was known to the claimant, but not applied for, the application may be adversed, or a patent may be set aside for fraud, since the price per acre of placer land is one-half less than that of lode claims.

Limitation.—"All placer mining patents granted by the United States since July 9th, 1870, which embrace more than 160 acres of land, are utterly *null and void*, because contrary to the Act of Congress, July 9th, 1870. And the Court will allow testimony outside of the patent to show that the land was entered either before or since July 9th, 1870."

Decision of Judge Hallett, in case of St. Louis Mining and Smelting Co. *vs.* Smith, U. S. Circuit Court, Colo., June 10th, 1880.

Surveyor-General to Appoint Surveyors of Mining-Claims, etc.

Sec. 2334. The Surveyor-General of the United States may appoint in each land-district containing mineral lands as many competent surveyors as shall apply for appointment to survey mining-claims. The expenses of the survey of vein or lode claims, and the survey and subdivision of placer-claims into smaller quantities than 160 acres, together with the cost of publication of notices, shall be paid by the applicants, and they shall be at liberty to obtain the same at the most reasonable rates, and they shall also be at liberty to employ any United States deputy-surveyor to make the survey. The Commissioner of the General Land-Office shall also have power to establish the maximum charges for surveys and publication of notices under this chapter; and, in case of excessive charges for publication, he may designate any newspaper published in a land-district where mines are situated for the publication of mining-notices in such district, and fix the rates to be charged by such paper; and, to the end that the Commissioner may be fully informed on the subject, each applicant shall file with the Register a sworn statement of all charges and fees paid by such applicant for publication and surveys, together with all fees and money paid the Register and the Receiver of the Land-Office, which statement shall be transmitted, with the other papers

in the case, to the Commissioner of the General Land-Office.—*May 10, 1872.*

Verification of Affidavits, etc.

Sec. 2335. All affidavits required to be made under this chapter may be verified before any officer authorized to administer oaths within the land-district where the claims may be situated, and all testimony and proofs may be taken before any such officer, and, when duly certified by the officer taking the same, shall have the same force and effect as if taken before the Register and Receiver of the Land-Office. In cases of contest as to the mineral or agricultural character of land, the testimony and proofs may be taken as herein provided, on personal notice of at least ten days to the opposing party; or if such party cannot be found, then by publication of at least once a week for thirty days in a newspaper, to be designated by the Register of the Land-Office as published nearest to the location of such land; and the Register shall require proof that such notice has been given. —*May 10, 1872.*

Intersecting Veins.—Veins Uniting.

Sec. 2336. Where two or more veins intersect or cross each other, priority of title shall govern, and such prior location shall be entitled to all ore or mineral contained within the space of intersection; but the subsequent location shall have the right of way through the space of intersection, for

the purposes of the convenient working of the mine. And where two or more veins unite, the oldest, or prior location, shall take the vein below the point of union, including all the space of intersection.—*May 10, 1872.*

Col. Laws. 1802–3. (Miscellaneous.)

MILL SITES, ETC.

SEC. 2337. Where non-mineral land not contiguous to the vein or lode, is used or occupied by the proprietor of such vein or lode, for mining or milling purposes, such non-adjacent surface ground may be embraced and included in an application for a patent for such vein or lode, and the same may be patented therewith, subject to the same preliminary requirements as to survey and notice as are applicable to veins or lodes; but no location hereafter made of such non-adjacent land shall exceed five acres, and payment for the same must be made at the same rate as fixed by this chapter for the superficies of the lode. The owner of a quartz mill or reduction works, not owning a mine in connection therewith, may also receive a patent for his mill-site, as provided in this section.—*May 10, 1872.*

Must adjoin side of claim.—A mill site which abuts against the end of a lode claim cannot be patented, although a mill site contiguous to the side lines may be. Sickels, p. 461.

Not adjoining Lode.—To entitle the owner of a mill site, not adjoining a lode, to make application for a patent, there must be $500 worth of labor or improvements upon such mill site.

Joint Entry.—But where entry for patent is made of a lode and mill site jointly and there are $500 worth of improvements on the lode claim, no improvements are required on the mill site.

1 L. O., 2.

Location.—Mill sites may be located by a declaratory statement according to the form given in section 2128 of the General Laws.

Conditions Imposed—Easements.

Sec. 2338. As a condition of sale, in the absence of necessary legislation by Congress, the local Legislature of any State or Territory may provide rules for working mines involving easements, drainage, and other necessary means to their complete development; and those conditions shall be fully expressed in the patent.—*July 26, 1866.*

Col. Stat. 1798, et cet. (Easements.)

Water Rights.

Sec. 2339. Whenever, by a priority of possession, rights to the use of water for mining, agricultural, manufacturing, or other purposes, have vested and accrued, and the same are recognized and acknowledged by the local customs, laws and the decisions of courts, the possessors and owners of such vested rights shall be maintained and protected in the same; and the right of way for the construction of ditches and canals for the purposes herein specified is acknowledged and confirmed; but whenever any person, in the construction of any ditch or canal, injures or damages the possession of any settler on the public domain, the party committing such injury or damage shall be liable to the party injured for such injury or damage.—*July 26, 1866.*

SEC. 2340. All patents granted, or pre-emption or homesteads allowed, shall be subject to any vested and accrued water-rights, or rights to ditches and reservoirs used in connection with such water rights, as may have been acquired under or recognized by the preceding section.—*July 9, 1870.*

HOMESTEAD RIGHTS ON MINERAL LANDS.

SEC. 2341. Wherever, upon the lands heretofore designated as mineral lands, which have been excluded from survey and sale, there have been homesteads made by citizens of the United States, or persons who have declared their intention to become citizens, which homesteads have been made, improved and used for agricultural purposes, and upon which there have been no valuable mines of gold, silver, cinnabar or copper discovered, and which are properly agricultural lands, the settlers or owners of such homesteads shall have a right of pre-emption thereto, and shall be entitled to purchase the same at the price of one dollar and twenty-five cents per acre, and in quantity not to exceed 160 acres, or they may avail themselves of the provisions of chapter 5 of this title, relating to "Homesteads."—*July 26, 1866.*

SEPARATION OF AGRICULTURAL LANDS.

SEC. 2342. Upon the survey of the lands described in the preceding section, the Secretary of the Interior may designate and set apart such portions of the same as are clearly agricultural lands,

which lands shall thereafter be subject to pre-emption and sale as other public lands, and be subject to all the laws and regulations applicable to the same.—*July 26, 1866.*

Land Districts.

Sec. 2343. The President is authorized to establish additional land districts, and to appoint the necessary officers under existing laws, wherever he may deem the same necessary for the public convenience in executing the provisions of this chapter.—*July 26, 1866.*

Colorado has six land districts, with offices located at Denver, Leadville, Central, Pueblo, Del Norte, and Lake City, respectively.

Vested Rights Respected.

Sec. 2344. Nothing contained in this chapter shall be construed to impair, in any way, rights or interests in mining property acquired under existing laws.—*May 10, 1872.*

Sec. 2345.

(Excepts the States of Michigan, Wisconsin and Minnesota from the operations of this Act.)

State and Railroad Grants.

Sec. 2346. No act passed at the first session of the Thirty-Eighth Congress, granting lands to States or corporations to aid in the construction of roads or for other purposes, or to extend the time of grants made prior to the thirtieth day of January, 1865, shall be so construed as to embrace mineral

lands, which in all cases are reserved exclusively to the United States, unless otherwise specially provided in the Act or Acts making the grant.—*Jan. 30, 1865.*

COAL LANDS.

Laws of the United States. Revised Statutes, 1878.
Act of March 3, 1873.

SEC. 2347. Every person above the age of twenty-one years, who is a citizen of the United States, or who has declared his intention to become such, or any association of persons severally qualified as above, shall, upon application to the register of the proper land-office, have the right to enter, by legal subdivisions, any quantity of vacant coal-lands of the United States not otherwise appropriated or reserved by competent authority, not exceeding 160 acres to such individual person, or 320 acres to such association, upon payment to the receiver of not less than ten dollars per acre for such lands, where the same shall be situated more than fifteen miles from any completed railroad, and not less than twenty dollars per acre for such lands as shall be within fifteen miles of such road.

SETTLERS PREFERRED.

SEC. 2348. Any person or association of persons, severally qualified, as above provided, who have opened and improved, or shall hereafter open

and improve, any coal mine or mines upon the public lands, and shall be in actual possession of the same, shall be entitled to a preference-right of entry, under the preceding section, of the mines so opened and improved; *provided*, That when any association of not less than four persons, severally qualified as above provided, shall have expended not less than five thousand dollars in working and improving any such mine or mines, such association may enter not exceeding 640 acres, including such mining improvements.

Land-Office Proceedings.

Sec. 2349. All claims under the preceding section must be presented to the register of the proper land-district within sixty days after the date of actual possession and the commencement of improvements on the land, by the filing of a declaratory statement therefor; but when the township plat is not on file at the date of such improvement, filing must be made within sixty days from the receipt of such plat at the district office; and where the improvements shall have been made prior to the expiration of three months from the 3d day of March, 1873, sixty days from the expiration of such three months shall be allowed for the filing of a declaratory statement, and no sale under the provisions of this section shall be allowed until the expiration of six months from the 3d day of March, 1873.

Entry Limited.

Sec. 2350. The three preceding sections shall be held to authorize only one entry by the same person or association of persons; and no association of persons, any member of which shall have taken the benefit of such sections, either as an individual or as a member of any other association, shall enter or hold any other lands under the provisions thereof; and no member of any association which shall have taken the benefit of such sections shall enter or hold any other lands under their provisions; and all persons claiming under section 2348 shall be required to prove their respective rights and pay for the lands filed upon within one year from the time prescribed for filing their respective claims; and upon failure to file the proper notice, or to pay for the land within the required period, the same shall be subject to entry by any other qualified applicant.

Conflicting Claims.

Sec. 2351. In case of conflicting claims upon coal lands where the improvements shall be commenced, after the 3d day of March, 1873, priority of possession and improvement, followed by proper filing and continued good faith, shall determine the preference-right to purchase. And also where improvements have already been made prior to the third day of March, 1873, division of the land claimed may be made by legal subdivi-

sions, to include, as near as may be, the valuable improvements of the respective parties. The Commissioner of the General Land Office is authorized to issue all needful rules and regulations for carrying into effect the provisions of this and the four preceding sections.

VESTED RIGHTS—RESTRICTIONS.

SEC. 2352. Nothing in the five preceding sections shall be construed to destroy or impair any rights which may have attached prior to the third day of March, 1873, or to authorize the sale of lands valuable for mines of gold, silver, or copper.

TIMBER ON MINERAL LANDS.

United States Statutes, 1877-78, Chapter 150, page 88.

An Act authorizing the citizens of Colorado, Nevada and the territories to fell and remove timber on the public domain for mining and domestic purposes. Approved June 3d, 1878.

TIMBER FREE TO MINERS, ETC.

Be it enacted by the Senate and House of Representatives of the United States of America, in Congress assembled, That all citizens of the United States and other persons, *bona fide* residents of the state of Colorado, or Nevada, or either of the territories of New Mexico, Arizona, Utah, Wyoming, Dakota, Idaho, or Montana, and all other mineral districts of the United States, shall be, and are

hereby, authorized and permitted to fell and remove, for building, agricultural, mining, or other domestic purposes, any timber or other trees growing or being on the public lands, said lands being mineral, and not subject to entry under existing laws of the United States, except for mineral entry, in either of said states, territories or districts of which such citizens or persons may be at the time *bona fide* residents, subject to such rules and regulations as the Secretary of the Interior may prescribe for the protection of the timber and of the undergrowth growing upon such lands, and for other purposes: *Provided*, the provisions of this Act shall not extend to railroad corporations.

LAND OFFICE INSPECTION.

SEC. 2. That it shall be the duty of the register and the receiver of any local land office in whose district any mineral land may be situated, to ascertain from time to time whether any timber is being cut or used upon any such lands, except for the purposes authorized by this Act, within their respective land districts; and, if so, they shall immediately notify the Commissioner of the General Land Office of that fact; and all necessary expenses incurred in making such proper examinations shall be paid and allowed such register and receiver in making up their next quarterly accounts.

PENALTY.

SEC. 3. Any person or persons who shall violate the provisions of this Act, or any rules and regu-

lations in pursuance thereof made by the Secretary of the Interior, shall be deemed guilty of a misdemeanor, and, upon conviction, shall be fined in any sum not exceeding five hundred dollars, and to which may be added imprisonment for any term not exceeding six months.

Approved June 3, 1878.

Rules and Regulations for the Protection of Timber.

With a view to, and the intention of, preserving the young timber and undergrowth upon the mineral lands of the United States, and to the end that the mountain sides may not be left denuded and barren of the timber and undergrowth necessary to prevent the precipitation of the rain-fall and melting snows in floods upon the fertile, arable lands in the valleys below, thus destroying the agricultural and pasturage interests of the mineral and mountainous portions of the country, I do hereby make and cause to be promulgated, by virtue of the power vested in me by the Act entitled "An Act authorizing the citizens of Colorado, Nevada and the territories (excepting Washington territory), to fell and remove timber on the public domain for mining and domestic purposes," the following rules and regulations:

1. Section 2461, Revised Statutes, is still in force in all the states and territories named in the bill, and its provisions may be enforced as heretofore against persons trespassing upon any other

than lands which are in fact mineral, or have been withdrawn as such; and in all cases where trespasses are committed upon the timber upon public lands which are not mineral, the trespassers will be prosecuted under said section.

2. It shall be unlawful for any person to cut or remove, or cause to be cut or removed, from any of the mineral lands of the United States, any timber or undergrowth of any kind whatever less than *eight* inches in diameter; and any person so offending shall be liable to be fined, in compliance with the provisions of the third section of said Act, in any sum not exceeding five hundred dollars, and to which may be added imprisonment for any term not exceeding six months.

J. A. WILLIAMSON,
Commissioner.

Approved August 16, 1878, by C. SCHURZ, *Secretary.*

Timber on Mineral Lands.—Timber on mineral lands may be used for agricultural, mining, or other domestic purposes, subject to the rules and regulations of the Secretary of the Interior.

Eight Inch Timber Excepted.—It is unlawful for any person to cut or remove any timber or undergrowth which is less than eight inches in diameter, under penalty of a fine not exceeding $500, to which may be added imprisonment for any term not exceeding six months.

PART II.

THE MINING LAWS OF COLORADO.

Session Laws, 1874.

FROM THE GENERAL LAWS, 1877.

Lode Claims—Length 1500 Feet.

Sec. 1811. The length of any lode claim hereafter located may equal but not exceed 1500 feet along the vein. See U. S. Stat., Sec. 2320 *et seq.*

Width 150 or 300 Feet.

Sec. 1812. The width of lode claims hereafter located in Gilpin, Clear Creek, Boulder and Summit counties shall be 75 feet on each side of the centre of the vein or crevice; and in all other counties the width of the same shall be 150 feet on each side of the centre of the vein or crevice; *Provided*, That hereafter any county may, at any general election, determine upon a greater width, not exceeding 300 feet on each side of the centre of the vein or lode, by a majority of the legal votes cast at said election; and any county, by such vote at such election, may determine upon a less width than above specified.

Certificate of Location—Record.

Sec. 1813. The discoverer of a lode shall, within three months from the date of discovery, record his claim in the office of the recorder of the county in which such lode is situated by a location certificate, which shall contain: 1st, the name of the lode; 2d, the name of the locator; 3d, the date of location; 4th, the number of feet in length claimed on each side of the centre of discovery shaft; 5th, the general course of the lode as near as may be.

Essentials.—The first three requirements are essential and the omission of any one of them might be fatal to the title.

(See next section.)

A Location and Record made prior to the discovery of mineral is valid, if followed up by such discovery within ninety days. In such case the discovery relates back to the date of location.

Zollar's & Highland Chief Cons. Mining Co. *vs.* Seth Evans. Oct., 1880. Col. Law Reporter, Vol. 1, p. 217.

Form of Location Certificate.

Notice to all Persons is hereby given that ———————— ———— did on the———day of————188–, discover and disclose a lode bearing valuable gold and silver minerals, and did, within sixty days from said ——— day of ———— develop and define said lode by a shaft———feet deep (or by a tunnel, cut or adit at a depth of ——— feet) and named it the————**Lode;** and did on the———day of ——— 188–, claim and locate upon the ground————linear feet in length of the said ——— lode, with———— feet in width of surface ground,———— linear feet of said lode, so located, being ———— of the centre of discovery shaft (tunnel, cut or adit) thereon, and————linear feet, being ———— of the centre of said shaft (tunnel, cut or

adit), and ———— feet in width of said surface being on the (easterly) side of the middle of the vein and———— feet being on the (westerly) side thereof.

Said claim is situated in————————Mining District in the county of————————and State of Colorado, and the boundaries thereof are as follows, to wit:

Beginning at (N. W.) cor. No. 1, thence ———— (750) feet to centre stake and (1500) feet to cor. No. 2; thence ———— (300) feet to cor. No. 3; thence ———— (750) feet to centre stake and (1500) feet to cor. No. 4; thence———— (300) feet to cor. No. 1, the place of beginning.

(Cor. No. 1 should be designated as clearly as possible and tied to some well known land mark or corner of a patented claim. For further identification the discovery shaft and other corners may also be tied to some prominent object.)

Date of certificate, ——— ————.

Locator, ——— — ——— [SEAL.]

The Survey should be made by a competent surveyor.

Failure to Record Location within three months will not render the same invalid, provided the requirements of the law be met, before another location on the same ground has been perfected. Faxon *vs.* Barnard et al., Nov. 4, 1880. Law Reporter, vol. 1, p. 145

One in Actual Possession having uncovered the lode, though not having recorded the claim as required by law, cannot be ousted by a subsequent discoverer, as to the ground actually held.

A location cannot be extended over a senior discovery in the actual possession of another. Same case.

When Void.

Sec. 1814. Any location certificate of a lode claim which shall not contain the name of the lode, the name of the locator, the date of location, the number of lineal feet claimed on each side of the discovery shaft, the general course of the lode, and

such description as shall identify the claim with reasonable certainty, shall be void

Permanent Monument.—The certificate of location is also void unless it refers to some natural object or permanent monument in describing the claim.

Faxon *vs.* Barnard et al., above.
See U. S. Stat. sec. 2324, p. 22.

Requirements of Location.

Sec. 1815. Before filing such location certificate, the discoverer shall locate his claim by: *First*—sinking a discovery shaft upon the lode to the depth of at least ten feet from the lowest part of the rim of such shaft at the surface, or deeper, if necessary to show a well-defined crevice. *Second*—by posting at the point of discovery on the surface, a plain sign or notice containing the name of the lode, the name of the locator, and the date of discovery. *Third*—by marking the surface boundaries of the claim.

Middle of Vein.—When the locator does not determine by exploration where the middle of the vein at the surface is, his discovery shaft must be assumed to mark such point.

Sickels, p. 528.

Discovery Shaft.—To constitute a good location, the vein or mineral bearing rock must be disclosed in the discovery shaft at a depth of ten feet or more. A discovery of mineral after location, in another part of the claim, will not avail.

Van Zandt *vs.* The Argentine Mining Co. Law Reporter, Vol. 1, p. 525, June 16, 1881.

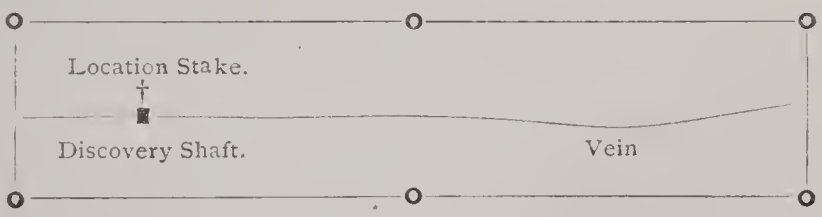
Where the discoverer is prevented by an adverse claimant from sinking a shaft to the required depth, this does not prejudice his right. Erhardt *vs.* Board, June 20, 1881. Law Reporter, p. 497.

Discovery Stake—Possession.—The discoverer is not required to remain in personal possession during the entire sixty days which the law allows to sink a discovery shaft. The setting up of the discovery stake, with the notice thereon as required, is equivalent to actual possession for the sixty days. Same case.

Six Location Stakes.

Sec. 1816. Such surface boundaries shall be marked by six substantial posts hewed or marked on the side or sides which are in toward the claim, and sunk in the ground to-wit: one at each corner and one at the centre of each side line. Where it is practically impossible on account of bed rock to sink such posts, they may be placed in a pile of stones, and where in marking the surface boundaries of a claim any one or more of such posts shall fall by right upon precipitous ground, where the proper placing of it is impracticable or dangerous to life or limb, it shall be legal and valid to place any such post at the nearest practicable point, suitably marked to designate the proper place.

Diagram of Location.



Failure to Keep Stakes in Position.—A claimant is required to keep his boundary stakes in position, prior to obtaining a patent, and should he fail to do so, he will be bound by his recorded location.

Pollard *vs.* Shively, Sup. Ct. Col., Dec. 7, 1880. Law Reporter, Vol. 1, 230.

Variance.—If there is a variance between the boundaries as staked on the ground and the location certificate, the stakes control.

FORM OF NOTICE ON STAKE.

The ——— Lode, discovered by ———(Date.) Claim 750 feet (northerly) and 750 feet (southerly) from discovery shaft (tunnel or cut), by 300 feet in width.

The Date of Location is not the date of discovery, but is the time when the several acts which constitute a location have been performed, viz: when the stakes have been set, the discovery notice posted and discovery shaft sunk to the required depth.

Discovery Gives Title.—The discovery alone gives title for the time allowed by law to complete the location and record, and after the completion of location and record, the title still relates back to the date of discovery.

So that a title of later record may prevail over one of earlier record where the former has the prior discovery.

Murley *vs.* Ennis, 2 Colo., p. 300. Patterson *vs.* Hitchcock, 3 Colo., 538.

For this reason the Location Certificate and the Discovery Notice should give the date of discovery.

OPEN CUTS AND TUNNEL DISCOVERIES. ADITS.

SEC. 1817. Any open cut, cross-cut or tunnel which shall cut a lode at the depth of ten feet below the surface, shall hold such lode, the same as if a discovery shaft were sunk thereon, or an adit of at least ten feet in along the lode, from the point where the lode may be in any manner discovered, shall be equivalent to a discovery shaft.

Adit Defined.—An Adit is a horizontal drift or passage into a mine.

Sixty Days to Sink Discovery Shaft.

Sec. 1818. The discoverer shall have sixty days from the time of uncovering or disclosing a lode to sink a discovery shaft thereon.

Construction of Certificate.

Sec. 1819. The location, or location certificate of any lode claim shall be construed to include all surface ground within the surface lines thereof, and all lodes and ledges throughout their entire depth, the top or apex of which lie inside of such lines extended downward, vertically, with such parts of all lodes or ledges as continue by dip beyond the side lines of the claim, but shall not include any portion of such lodes or ledges beyond the end lines of the claim, or the end lines continued, whether by dip or otherwise, or beyond the side lines in any other manner than by the dip of the lode. See U. S. Stat., 2320.

End Lines.

Sec. 1820. If the top or apex of a lode in its longitudinal course extends beyond the exterior lines of the claim at any point on the surface, or as extended vertically downward, such lode may not be followed in its longitudinal course beyond the point where it is intersected by the exterior lines.

Easements.

Sec. 1821. All mining claims now located, or which may be hereafter located, shall be subject to

the right of way of any ditch or flume for mining purposes, or of any tramway or pack-trail, whether now in use or which may be hereafter laid out across any such location; *provided, always,* that such right of way shall not be exercised against any location duly made and recorded, and not abandoned prior to the establishment of the ditch, flume, tramway, or pack-trail, without consent of the owner, except by condemnation as in case of land taken for public highways. Parol consent to the location of any such easement, accompanied by the completion of the same over the claim, shall be sufficient without writings; *and provided further,* that such ditch or flume shall be so constructed that the water from such ditch or flume shall not injure vested rights by flooding or otherwise.

Mining Under Surface Improvement.

Sec. 1822. When the right to mine is in any case separate from the ownership or right of occupancy to the surface, the owner or rightful occupant of the surface may demand satisfactory security from the miner, and if it be refused may enjoin such miner from working until such security is given. The order for injunction shall fix the amount of bond.

Relocation of His Own Claim by Owner.

Sec. 1823. If at any time the locator of any mining claim heretofore or hereafter located, or his assigns, shall apprehend that his original certificate

was defective, erroneous, or that the requirements of the law had not been complied with before filing, or shall be desirous of changing his surface boundaries, or of taking in any part of an overlapping claim which has been abandoned, or in case the original certificate was made prior to the passage of this law, and he shall be desirous of securing the benefits of this act, such locator, or his assigns, may file an additional certificate, subject to the provisions of this act. *Provided*, that such relocation does not interfere with the existing rights of others at the time of such relocation, and no such relocation, or other record thereof, shall preclude the claimant or claimants from proving any such title or titles as he or they may have held under previous location.

Old Locations.—Old claims of 3,000 feet in length may be relocated, but are limited to 1,500 feet, when the additional width allowed by the present law is taken.

Annual Affidavit of Labor.

Sec. 1824. Within six months after any set time or annual period allowed for the performance of labor, or making improvements upon any lode claim, the person on whose behalf such outlay was made, or some person for him, shall make and record an affidavit in substance as follows:

State of Colorado, }
——— County. } ss.

Before me, the subscriber, personally appeared, ———, who, being duly sworn, saith, that at least

———— dollars' worth of work or improvements were performed or made upon (here describe claim or part of claim), situate in ——— Mining District, County of ———, State of Colorado. Such expenditure was made by or at the expense of ———, owners of said claim, for the purpose of holding said claim.

[Jurat.] Signature.

And such signature shall be *prima facie* evidence of the performance of such labor.

Relocation of Abandoned Claims.

Sec. 1825. The relocation of abandoned lode claims shall be by sinking a new discovery shaft and fixing new boundaries in the same manner as if it were the location of a new claim; or the relocator may sink the original discovery shaft ten feet deeper than it was at the time of abandonment, and erect new, or adopt the old boundaries, renewing the posts if removed or destroyed. In either case a new location stake shall be erected. In any case, whether the whole or part of an abandoned claim is taken, the location certificate may state that the whole or any part of the new location is located as abandoned property.

It is always safer to sink a new discovery shaft and to fix new boundaries.

What is an Abandonment.—Abandonment is a question of intention. But practically the question generally turns upon the neglect to do the annual labor as prescribed by the statute.

One Certificate for Each Claim.

Sec. 1826. No location certificate shall claim more than one location, whether the location be made by one or several locators. And if it purport to claim more than one location it shall be absolutely void, except as to the first location therein described, and if they are described together, or so that it cannot be told which location is first described, the certificate shall be void as to all.

TUNNELS—RECORD.

Sec. 1800. If any person or persons shall locate a tunnel claim, for the purpose of discovery he shall record the same, specifying the place of commencement and termination thereof, with the names of the parties interested therein.—*Nov. 7, 1861.*

See U. S. Stat., 2323.

PLACERS.

An Act relating to location and representation of placer mining claims. Act of 1879.

Location Certificate—Record.

Be it enacted by the General Assembly of the State of Colorado: Sec. 1. The discoverer of a placer claim shall, within thirty days from the date of discovery, record his claim in the office of the recorder of the county in which said claim is situated, by a a location certificate, which shall contain: *First,* the

name of the claim, designating it as a placer claim. *Second*, the name of the locator. *Third*, the date of location. *Fourth*, the number of acres or feet claimed. And *fifth*, a description of the claim by such reference to natural objects or permanent monuments as shall identify the claim.

Before filing such location certificate, the discoverer shall locate his claim: *First*, by posting upon such claim a plain sign or notice, containing the name of the claim, the name of the locator, the date of discovery and the number of acres or feet claimed. *Second*, by marking the surface boundaries with substantial posts, and sunk in the ground, to-wit: One at each angle of the claim.

ANNUAL LABOR—CO-OWNER.

SEC. 2. On each placer claim of one hundred and sixty acres or more heretofore or hereafter located, and until a patent has been issued therefor, not less than one hundred dollars' worth of labor shall be performed or improvements made by the first day of August, 1879, and by the first day of August of each year thereafter. On all placer claims containing less than one hundred and sixty acres, the expenditure during each year shall be such proportion of one hundred dollars as the number of acres bears to one hundred and sixty. On all placer claims containing less than twenty acres, the expenditures during each year shall not be less than twelve dollars; but when two or more claims lie contiguous and are owned by the same

person, the expenditure hereby required for each claim may be made on any one claim; and upon a failure to comply with these conditions, the claim or claims upon which such failure occurred, shall be open to relocation, in the same manner as if no location of the same had ever been made; *provided*, that the original locators, their heirs, assigns or legal representatives, have not resumed work upon the claim after failure and before such location; *provided*, the aforesaid expenditures may be made in building or repairing ditches to conduct water upon such ground, or in making other mining improvements necessary for the working of such claim.

Upon the failure of any one of several co-owners to contribute his proportion of the expenditures required hereby, the co-owners who have performed the labor or made the improvements, may at the expiration of the year, to-wit: the first of August, 1879, for the locations heretofore made, and one year from the date of locations hereafter made, give such delinquent co-owner personal notice in writing, or if he be a non-resident of the State, a notice by publication in the newspaper published nearest the claim for at least once a week for ninety days, and mailing him a copy of such newspaper if his address be known, and if at the expiration of ninety days after such notice in writing, or after the first publication of such notice, such delinquent should fail or refuse to contribute his proportion of the

expenditure required by this section, his interest in the claim shall become the property of his co-owners who have made the required expenditures.

See U. S. Stat. 2329.

Location of Placers.—The requirements with respect to placer locations are similar to those of lode claims.

The principal points of difference are :

First—No discovery shaft is required.

Second—The location must be completed within thirty instead of three months.

Third—Where the claim or claims embrace less than 160 acres, the amount of annual labor, which the law requires, is less than $100 per year, and only such proportion thereof as the number of acres of the claim bears to $100.

Fourth—Where placer claims are contiguous and belong to the same owner, the annual expenditure for all of such claims may be made upon any one claim.

FORM OF LOCATION NOTICE.

The ——— **Placer Claim** ——— acres (or feet) as staked on this ground;

The Location Certificate is similar to that of a lode claim.

See Colo. Stat. 1813, (Lodes.)

Flumes and Ditches.—The state law provides that corporations organized under the laws of Colorado for constructing ditches or flumes, must commence work within 90 days from the date of their certificate of incorporation, use due diligence and complete the same within two years from the time of commencement, or forfeit all right to the water so claimed.

See Col. Stat. 274, (General Laws.)

Of Individuals.—Upon the requirements of individuals in that respect, the law is silent, but by analogy, they would be the same as for corporations.

CORRECTIONS.

Page 62, 8th line, read thirty DAYS.

Page 62, 18th line, add Date _____, and Locator_____, to Notice of Location.

FORM OF NOTICE.

(To be posted on the stream from which water is to be taken.)

I hereby claim 50 inches of water in the ——— river (creek or gulch) to be taken by ditch from this point to the ——— placer claim.

Dated ———

Locator ——— ———

Record.—The location must be followed up by record of a declaration of occupation, according to the form given in section 2128 of the General Laws.

Private Lands cannot be crossed by ditch locators without the consent of the owner, or else condemnation proceedings under the State laws. See Col. Stat., 1821. (Lodes and Placers.)

WATER RIGHTS—EASEMENTS.

RIGHT OF WAY.

SEC. 1798. Whenever any person or persons are engaged in bringing water into any portion of the mines, they shall have the right of way secured to them, and may pass over any claim, road, ditch, or other structure, *provided*, the water be guarded so as not to interfere with prior rights.

SEC. 1821. All mining claims now located or which may be hereafter located, shall be subject to the right of way of any ditch or flume for mining purposes, or of any tramway or pack-trail, whether now in use or which may be hereafter laid out across any such location; *provided, always*, that such right of way shall not be exercised against any location duly made and recorded, and not abandoned prior to the establishment of the ditch, flume, tramway or pack trail, without consent of

the owner, except by condemnation as in case of land taken for public highways. Parol consent to the location of any such easement, accompanied by the completion of the same over the claim, shall be sufficient without writings; *and provided further*, that such ditch or flume shall be so constructed that the water from such ditch or flume shall not injure vested rights by flooding or otherwise.

Tailings.

Sec. 1804. In no case shall any person or persons be allowed to flood the property of another person with water, or wash down the tailings of his or their sluice upon the claim or property of other persons, but it shall be the duty of every miner to take care of his own tailings, upon his own property, or become responsible for all damages that may arise therefrom.

Sec. 1805. Every miner shall have the right of way across any and all claims for the purpose of hauling quartz from his claim.—*Nov. 7, 1861.*

See U. S. Stat., 2338, *et seq.*

MISCELLANEOUS LAWS (COLORADO).

Taxation—Constitutional Exemption of Mines.

Mines and mining claims bearing gold, silver and other precious metals (except the net proceeds and surface improvements thereof,) shall be exempt

from taxation for the period of ten years from the date of the adoption of this constitution (July 1, 1876,) and thereafter may be taxed as provided by law. Art. 10, Sec. 3, Colo. Const.

Net Proceeds not Taxable.—Judge Helm of the Fourth Judicial District of Colorado, has decided that the proviso for taxing the "net proceeds" of mines, is nugatory, because neither the constitution nor the legislature have provided any machinery for making the provision operative:

"There is nothing in this section or any other constitutional provision which indicates how this or any other species of property shall be listed or assessed for taxation, or how the tax shall be levied or collected thereon. On the contrary it expressly says these things shall be done by "general laws which shall prescribe such regulations" as may be necessary to "secure a just valuation of all property." It cannot be claimed that the constitution is self-enforcing on this subject. If it is self-enforcing as to the net proceeds of the mine, it is also self-enforcing as to all other species of property; and our revenue act contains a large number of sections that are superfluous and might be expunged.

If this provision is not self-enforcing as to net proceeds of mines, what machinery has the Legislature provided to meet the emergency?

There is certainly nothing in the statutes distinguishing this, so far as the assessment, levy and collection of taxes thereon are concerned, from other species of property. The statute simply re-enacts the constitutional provision, and goes no further. If, then, taxes can be collected at present on the net proceeds of mines, the assessment must be made and the taxes must be levied and collected under and by virtue of the general provisions of these subjects in the revenue act.

This act provides that "all personal property shall be listed in the county where it shall be on the first day of May on the then current year." General Laws, sec. 2248.

The proceeds of a mine are accruing from day to day during the year. From time to time, if there be an excess after deduct-

ing expenses, that excess is paid over to the owners or to stock holders as dividends; the net proceeds, if the mine be fortunate enough to have any, are almost always disbursed and distributed as rapidly as they accrue, so that on the first day of May or on any other given day, the net proceeds in a particular county would be but a small fraction of the aggregate net proceeds for the year previous. It needs no argument or illustration to demonstrate that the assessment of the net proceeds of mines under this section would be a farce. Of the small proportion that would otherwise be on hand in a given county on the first day of May, how much would be there on the suceeeding anniversaries of that day after the first successful attempt to assess the mining proceeds of such county, under the above provisions? I am not sure that the attempt to apply this section to the proceeds of mines, would be obnoxious to the constitution. For the statute would then practically amount to the exemption law."

See State *vs.* Kruttschnitt, 4 Nevada, 200.

Law of Possession.

Sec. 2131. Any person settled upon any of the public lands belonging to the United States may maintain *trespass quare clausum fregit*, trespass, ejectment, forcible entry and detainer, unlawful detainer and forcible detainer, for injuries done to the possession thereof.—*Nov. 7, 1861.*

Mining Claims, Real Estate.

Sec. 185. The terms "land" and "real estate," as used in this chapter, shall be construed as co-extensive in meaning with the terms "lands, tenements, hereditaments," and as embracing mining claims and other claims, and chattels real. The term "deed" includes mortgages, leases, releases, and every conveyance or incumbrance under seal.—*Nov. 7, 1861.*

TRANSFERABLE.

SEC. 2126. The owner of every claim, or improvement on every tract or parcel of land, has a transferable interest therein, which may be sold in execution or otherwise; and any sale of such improvement is a sufficient consideration to sustain a promise.—*Nov. 7, 1861.*

MINING DISTRICT RULES.

SEC. 2127. All rights of occupancy, possession and enjoyment of any tract or portion of the said public domain, acquired before the 7th day of November, A. D. 1861, shall be ascertained, adjudged and determined by the local law of the district or precinct in which such tract is situated, as it existed on the day when such rights were acquired, or as it thereafter may have existed; and if there were no laws at that time, then by the common custom then prevailing in respect to such property in the district or precinct in which it existed. All such rights of occupancy, possession and enjoyment, acquired since the said 7th day of November, A. D. 1861, shall be ascertained, adjudged and determined by the laws of this State in force at the date of such acquisition.—*From Acts of 1861 and 1868.*

EVIDENCE.

SEC. 386. The Colorado Code of Civil Procedure provides: In actions respecting mining claims, proof shall be admitted of the customs, usages and

regulations, established and in force in the mining districts embracing such claim; and such customs, usages and regulations, when not in conflict with the laws of this state, or of the United States, shall govern the decision of the action.

Record.

Sec. 1807. A copy of all the records, laws and proceedings of each mining district, so far as they relate to lode claims, shall be filed in the office of the County Clerk of the county in which the district is situated, within the boundaries of the district attached to the same, which shall be taken as evidence in any court having jurisdiction in the matters concerned in such record or proceedings; and all such records of deeds and conveyances, laws and proceedings of any mining district, heretofore filed in the Clerk's office of the proper county, and transcripts thereof, duly certified, whether such record relate to gulch claims, lode claims, building lots, or other real estate, shall have the like effect as evidence.—*1868.*

U. S. Title Paramount.

Sec. 2146. Nothing in this chapter contained shall be construed to deny the right of the United States to dispose of any lands in this state; nor shall the fact that the title to any lots, lands, lodes or mining claims hath not passed from the United States, be any bar to the recovery of the plaintiff in either of the actions specified in section

eight of this chapter. As against the United States, and all persons holding any of said lands under the United States, or the laws thereof, this chapter shall be of non-effect and void.—*Nov. 7, 1861.* See Sec. 2131, p. 66 *ante.*

MINING UNDER SURFACE IMPROVEMENTS.

SEC. 1799. No person shall have the right to mine under any building or other improvement, unless he shall first secure the parties owning the same against all damages, except by priority of right.—*Nov. 7, 1861.*

INTERFERENCE OF CLAIMS.

SEC. 1802. When it shall appear that one lode crosses, runs into, or unites with any other lode, the priority of record shall determine the rights of claimants; *provided*, that in no case where it appears that two lodes have crossed one another, shall the priority of record give any person the privilege of turning off from the crevice or lode which continues in the same direction of the main lode upon which he or they may have recorded their claim or claims, but such person or persons shall, at all times, follow the crevice running nearest in the general direction of the main lode upon which he or they may have recorded their claim or claims.

SEC. 1803. Where two crevices are discovered at a distance from each other, and known by different names, and it shall appear that the two

are one and the same lode, the persons having recorded on the first discovered lode shall be the legal owners.—*Nov. 7, 1861.* See U. S. Stat., Sec. 2336.

MINERS' LIEN.

Abridged from the Act approved February 12, 1881.

SEC. 7. **In What Cases Allowed.**—Miners, laborers and others who do work or labor to the amount of twenty-five dollars upon any mine, lode or deposit, under a contract, express or implied, with the owner, or his agent, and all persons who shall furnish any timber or other materials to the amount of twenty-five dollars or more for use in such mine, lode or deposit, shall have a lien upon the property for the amount of work done or materials furnished, by filing in the county clerk and recorder's office within forty days after the last labor was performed or materials furnished, a statement as required by section 2 of the act.

SEC. 4. **Sub-Contractor.**—Every sub-contractor, mechanic, laborer and material-man is entitled to a similar lien upon serving a notice upon the owner or his agent *in the afternoon of the Saturday next following the performance of the work* or furnishing the materials, and also recording a notice of his claim within forty days after the last labor was performed or materials furnished as in case of a contractor.

A Similar Lien is allowed for work done or materials furnished for any tramway, canal, ditch, flume, aqueduct or reservoir.

A Contractor is one who is employed directly by the owner.

A Sub-Contractor is one employed by a contractor.

Limitation.—The lien must be enforced by commencing suit within six months after record.

SEC. 11. **When Lien Attaches.**—All such liens shall relate back to the commencement of the work or labor or furnishing of materials by the claimant, and shall have priority over any and every lien or incumbrance subsequently intervening, and of all prior incumbrances, of which the lienor had no notice.

SEC. 13. **Other Remedies not Barred.**—The remedy given by this act shall be no bar to any other remedy which the claimant would otherwise have.

SEC. 16. **Surveyors.**—The act applies to surveyors for surveying and platting any mines, lodes or mineral deposits.

PENAL LAWS.

Abridged.

There are certain penal provisions in the General Laws respecting mines and mining claims which are cited below, the offence and the penalty attaching being given. For the full text of the law, see sections cited.

SEC. 764. **Using Fraudulent Scales for Weighing Gold or Gold Dust, Penalty:** Fine not exceeding $500 or confinement in county jail not exceeding six months.

SEC. 765. **Keeping Proceeds of Ore by Owner or Agent of Millowner and above proper charges:** Fine not exceeding $1000 or imprisonment in penitentiary not exceeding one year.

Sec. 776. **Salting Ore.**—Fine $500 to $1,000 or imprisonment for one to fourteen years, or both.

Sec. 1828. **Jumping Claims by Stealth or Violence, Threats, &c.**—Fine not exceeding $250, or thirty days in county jail. In such case possession may be recovered by a Mandatory Writ, under Section 1361 of the General Laws.

Sec. 1829. **Homicide by Those so Trespassing** is murder in the first degree, and is punished accordingly. And any person who is present aiding and abetting, or who encourages such entry by promise of money, or other thing of value, shall be deemed a principal in the commission of the offense.

Sec. 1603. **Removing or Defacing Location Marks.**—Fine not exceeding $1,000 or imprisonment not exceeding one year.

This law does not apply to abandoned claims.

Sec. 1962. **Keeping Fraudulent Mill Scales.**—Fine $100 to $1,000, or imprisonment not exceeding one year, or both.

Sec. 1963. **Fraudulent Undervaluation of Ores.**—Fine not exceeding $1,000, nor less than $100, or imprisonment not more than one year, or both.

ORE BUYERS.

(*Abridged from General Laws.*)

Sec. 1957. **Shall keep an Entry Book.**—Every person, association, or corporation that shall be engaged in the business of milling, sampling, concentrating, reducing, shipping, or purchasing ores in the State of Colorado, shall keep and preserve a book, in which shall be entered at the time of the delivery of each lot of ore:

First.—The name of the party on whose behalf such ore is delivered as stated.

Second.—The name of the teamster, packer, or other person actually delivering such ore, and the name of the owner of the team, or pack train delivering such ore.

Third.—The weight or amount of every such lot of ore.

Fourth.—The name and location of the mine or claim from which it shall be stated that the same has been mined or procured.

Fifth.—The date of delivery of any and all lots or parcels of ore.

Section 2 provides that the owner of or in any mine, upon making affidavit that ore has been stolen from him by any ore buyer, shall have access to the books of the latter and may examine all entries made during the fifteen days preceding the making of said affidavit.

Penalties.—Sections 3 and 4 of the act provide a penalty of not less than fifty, nor more than three hundred dollars for a violation of the preceding sections,—to be collected on action of debt.

FRAUDULENT CONVEYANCES.

Sec. 766. Any person or persons, who, after once selling, bartering or disposing of any tract or tracts of land, town lot or lots, or executing any bond or agreement for the sale of any

lands or town lot or lots, shall again knowingly and fraudulently sell, barter or dispose of the same tract or tracts of land or town lot or lots or any parts thereof, or shall knowingly and fraudulently execute any bond or agreement to sell or barter or dispose of the same land or lot or lots, or any part thereof to any other person or persons, for a valuable consideration, every such offender, upon conviction thereof, shall be punished by confinement in the penitentiary for a term not less than one year nor more than ten years. Col. Stat.

STOCK COMPANIES.

Objects.—The principal objects of stock companies for mining purposes are,

First. To facilitate the transfer of small interests in the property of the company, and place the property upon the market.

Second. To place the management of the property in the hands of a board of directors, thus avoiding all partnership difficulties.

Stock companies are formed in Colorado in pursuance of the provisions of Chapter XIX of the General Laws.

[The following provisions which are abridged from the Statute, relate to corporations formed for pecuniary profit.]

There must be a corporate or company name.

Certificate required.—The company must be composed of not less than three persons, who shall sign and acknowledge before the proper officer a certificate, stating :

The corporate name of said company.

The objects of the company.

The amount of capital stock.

The term of existence, not to exceed twenty years.

The number of shares of stock.

The number of directors or trustees.

Names of officers for first year.

Name of town and county where the principal office shall be kept.

Name of county or counties in which the principal business shall be carried on.

They shall make as many of these certificates as may be necessary, and one shall be filed in the office of the recorder of deeds in such county, or each of such counties, and one in the office of the Secretary of State.

And in case part of the business of the company is to be carried on in another state, the certificate shall state the fact, together with the name of the town and county in which the principal office is kept in this state.

No certificate will be filed or received where there is a prior one bearing the same name.

Powers and Liabilities.—Corporations may in any court in this State sue and be sued.

May have a common seal.

May own, possess and enjoy so much real and personal estate as shall be necessary for the transaction of their business.

May borrow money and pledge for their franchises and property both real and personal, to secure the payment thereof ;

And may exercise all the powers necessary and requisite to carry into effect the object for which they may be formed, as named in their certificate of incorporation.

The Shares of Stock shall not be less than ten, nor more than one hundred dollars each.

Stock is Personal Property and is transferable as such in the manner provided in the by-laws.

The Corporate Powers shall be exercised by a board of directors or trustees of not less than three nor more than thirteen, who shall be stockholders in said company ; and who shall, after the first year, be elected annually by the stockholders in manner prescribed in the by-laws.

Officers.—The directors or trustees shall elect one of their number to be president, and may elect or appoint such subordinate officers, as the Company may by its by-laws designate. Such officers may be required to give security for the faithful discharge of their official duties. The officers are, usually, president, vice president, secretary and treasurer, and superintendent.

The By-Laws are made by the directors.

Prohibition.—Corporations are prohibited from purchasing stock in their own company with the funds of the company.

Liability of Stockholders.—Stockholders are liable for the debts of the corporation only to the extent of the unpaid stock held by them.

Certificate of Stock Paid.—When the capital stock has been fully paid, the president and a majority of the directors or trustees shall within sixty days of the payment of the last installment make a sworn certificate of the fact and record the same in the office of the secretary of state and upon the county records in the county where the business of the company is transacted.

Stockholders to have Access to Books.—It is the duty of the company to keep correct books of account of all its business and any stockholder shall have the right at any reasonable time to examine all the books, accounts and papers of the company upon demand in writing of any officer, clerk, cashier or agent of the corporation.

Refusal.—In case of refusal by such officer or agent, he shall be deemed guilty of a misdemeanor and be liable to a penalty of $200.

Stock Issued in Payment of Property.—The directors or trustees may issue stock in payment of the property of the company, and the stock so issued shall be declared to be full paid and non-assessable.

A Complete Report of the business and status of the company, verified by the oath of the president or secretary is required to be filed annually.

Fraudulent Dividends.—If the officers of a company declare a dividend when such company is insolvent or which would diminish the amount of its capital stock, all the officers assenting thereto shall be liable for all debts of the company then existing, and for all that shall be contracted thereafter while the capital remains so diminished.

Misrepresentation by Officers.—The officers of the company are personally liable in damages for any material misrepresenta-

tion in any certified report or statement, or public notice, concerning the affairs of the company.

Foreign Corporations.—Before they will be permitted to do any business in this state they are required to file a certificate signed by the president and secretary of the company, with the secretary of state and with the recorder of the county where the business is to be carried on, designating the principal place of business in this state and naming an authorized agent at said place of business upon whom process may be served. And such corporation shall be subject to the same regulations which are imposed upon corporations of like character organized under the laws of this state. Foreign corporations are also required to file with the secretary of state a copy of their charter of incorporation, or in case such company is incorporated by certificate under any general incorporation law, a copy of such certificate and of such general incorporation law duly certified and authenticated by the proper authority of such foreign state.

Failure to comply with the foregoing requirements renders the officers of such company personally liable on all contracts made within this state.

Stockholders May Demand Statement.—The owner or owners of 15 per cent. of the capital stock may at any time, by request in writing, call upon the secretary, cashier or treasurer of the company for a statement in detail of the affairs of such corporation, which statement shall be rendered within twenty days from presentation of such request, and a copy thereof kept on file in the office of the company for six months for the inspection of all stockholders.

Requirements of Secretary.—The secretary of the company is required to keep a book containing a list of names of all stockholders, alphabetically arranged, showing their place of residence, number of shares held by each, when bought, when transferred, amount paid, etc, which book shall be open to inspection by stockholders and creditors, and all transfers of stock, to be valid, must be entered in said book within sixty days from the date of said transfer, by an entry showing to and from whom transferred.

An Act

To Permit Domestic Corporations doing Business in Other States to Accept the Laws of Other States and Territories.—*Session Laws, 1881.*

Be it enacted by the General Assembly of the State of Colorado: Section 1. It shall and may be lawful for any corporation created or existing under the laws of this state for the purpose, among others, of exercising its franchises or carrying on part of its business beyond the limits of this state, and in another state or territory of the United States or elsewhere, to accept any law of such other state or territory of the United States, or foreign state and government, and to exercise within the territory of such other state or territory, or foreign state and government, all such authorities, powers, privileges, rights and franchises as may be, by such laws conferred, subject to such duties, liabilities, and restrictions as may by such laws be imposed.

Approved February 9, 1881.

Mining Companies.

Sec. 283. **Two Classes of Stock.**—The certificate of incorporation of any mining company shall contain a statement that the stock of such company is either assessable or non-assessable, and each certificate of stock issued by any such company shall have plainly printed on the face thereof the word "*assessable*" or "*non-assessable*," as the case may be.

Stock Issued in Payment of Property.

Sec. 284. Any mining company, organized under the provisions of this act, may, for the purpose of purchasing mining property, and providing a capital for carrying on the business of the

company, issue full paid stock in payment of the same, which shall be non-assessable, until the balance or whole amount of the capital stock shall have been assessed to the par value thereof and fully paid, after which the stock shall all be equally and ratably liable to assessment for the operations of the company; *provided, however*, any company may issue all its stock assessable or non-assessable, but no company shall issue both assessable and non-assessable stock, except as provided in this section.

SEC. 285. **Assessable Stock, how assessed.**— In the case of assessable stock, when the board of directors shall deem it necessary that an assessment be made, they shall call a meeting of the stockholders, giving due notice by publication, as required by the statute, and if at such meeting the stockholders representing a majority of the stock shall vote in favor of the assessment, the directors shall levy the same. But this cannot be done oftener than once in three months; and no single assessment shall be greater than 5 per cent. of the par value of the stock, and shall not be payable in less than 30 days from the date of such assessment.

SEC. 286. **Sale of Delinquent Stock.**—If the assessment shall remain due and unpaid for 15 days after the same shall be due, the shares on which it is due become delinquent, and may be advertised and sold at public auction in not less than 60 days from the date the assessment was made, unless the same shall be redeemed before sale by payment of the amount assessed with interest and all costs of advertising.

SEC. 287. **Directors.**—The affairs of the company shall be managed by not less than *three* nor more than *nine* directors, who shall respectively be stockholders, and who shall, except the first year, be annually elected by the stockholders at such time and place as the by-laws provide.

Consolidating.—Mining companies may be consolidated under one organization as provided by Sec. 315.

PART III.

CONVEYANCES.

Mining claims are conveyed, mortgaged, etc., in the same manner as other real estate.

See Col. Laws, (miscellaneous,) Secs. 185 and 2126.

But the grantor should not enter into full covenants of warranty, because, until the granting of a patent, the paramount title remains with the United States. But the grantor may warrant his title in so far as the title to a mining claim admits of a warranty; that is, he may warrant his exclusive right to the "possession and enjoyment" of the claim, by virtue of his compliance with the mining laws.

The law implies such warranty from the operative words of the common mining deed.

The following is the form:

MINING DEED—(LODE CLAIM.)

This Indenture, made this ——— day of ——— in the year of our Lord one thousand eight hundred and ——— between ——— of the county of ——— state of ——— party of the first part and ——— of the same place, party of the second part,

Witnesseth: That the said party of the first part for and in consideration of the sum of ——— dollars to him in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, hath granted, bargained and sold, and by these presents doth grant, bargain, sell and convey unto the said party of the second part, his heirs and assigns, all the following described real estate, situate in the county of ——— and state of ——— to wit:

The ——— lode mining claim in ——— mining district, as located and recorded by ———

For fuller description of said claim reference is hereby made to the location certificate thereof, recorded in book —— on page —— of the records of said county.

Together with all and singular the lodes and veins within the lines of said claims, with the dips, spurs, mines minerals easements, mining fixtures, improvements, rights, privileges and appurtenances thereunto in anywise belonging;

To have and to hold the lands, tenements and hereditaments hereby conveyed unto the said party of the second part, his heirs and assigns forever.

In witness whereof the said party of the first part hath hereunto set his hand and seal, this ——— day of ——— A. D. ——.

——————— [SEAL.]

A notary's certificate of acknowledgement should be attached.

The Operative Words of the deed are "grant, bargain, sell and convey."

In a quit-claim deed the operative words are "remise, release and quit-claim."

Description.—It is not customary to describe a mining claim by metes and bounds, except in the location certificate. In describing a lode claim in a deed, the essential points are, the **Name of the Claim, the Mining District, County and State.**

To further identify the claim, may be stated the number of feet in length and width, and course of the vein, the name of the mountain, hill or gulch, and relative position of the claim thereon and name of the locator or locators, and reference may be made to the location certificate.

CONVEYANCE NOT IN WRITING.

A mining claim may also be conveyed by transfer of the possession thereof without any writing.

Mining Co. *vs.* Taylor, 10 Otto, p. 37.

In conveying **Patented Claims** the number of the survey lot should also be stated.

Placer Claims are described and conveyed in a similar manner.

Contracts relating to the title of real estate should always be in writing. Verbal contracts are not binding unless accompanied by part performance.

Consideration.—The consideration of a deed or other instrument in writing cannot be denied or varied for the purpose of avoiding the same. For the purpose of recovering the consideration money it can be, but not for the purpose of destroying the effect and operation of the deed.

Brown *vs.* State of Colorado, Law Reporter Vol. 1, p. 394.

Mining Bond.—A common form of conveyance heretofore has been the "Mining Bond," the purpose of which is to give the obligee, or purchaser, time to effect a sale or test the merits of a property with the privilege of buying the same within the time, and at a price named in the bond. But the Supreme Court of Colorado has held that such a bond, where no consideration is expressed, lacks the elements of a binding contract for want of mutuality, since one party binds himself to sell, but the other is not bound to buy.

"Its legal effect is that of a continuing offer to sell, which is capable of being converted into a binding contract, by a tender of the purchase money, or performance of the conditions of the bond, whatever they may be, before the seller withdraws the offer to sell. * * Where a money consideration for the option is expressed, or where the bond to convey requires the purchaser to improve and develop the property as a consideration for the option or in part performance of the condition of sale, and these terms have been duly complied with, a totally different case is presented. The latter case contains all the elements of a binding contract, and the purchaser, although free to reject the offer of sale, may elect to accept within the time."

Gordon *vs.* Darnell, Law Reporter, Vol. 1, p. 204.
Fritz *vs.* Finnerty, Law Reporter, Vol. 1, p. 481.

This being the law, a contract or option of sale, for a *consideration expressed* will be preferable to the mining bond, where time is desired by the purchaser.

The following form will answer the purpose :

Contract to Sell.

This Instrument Witnesseth, that for and in consideration of the sum of ——— Dollars, in hand paid by ———, the receipt whereof is hereby acknowledged. I, —— ———, of the county of ——— and State of —— ——, do hereby covenant and agree to sell and convey to said —— ———, of the county of ——— and State of ———, by a good and sufficient deed, or deeds, (showing a clear title free from all incumbrance.) the following described property, to wit: ———————————————

———————————————————————————

———————————————————————————

upon the following terms and conditions, to wit: For the sum of ——— Dollars, if paid by the said —— ——— on or before the —— day of ——, 188—.

Witness my hand and seal this —— day of —— 188—.

(Signed.) [Seal.]

(Add notary's certificate.)

Record.—This contract should be recorded, for the purpose of giving notice to subsequent purchasers, creditors, etc., and to avoid all difficulty, should be accompanied by a deed duly executed, and placed in escrow, to be delivered according to the terms of the contract. The deed should be enclosed in an envelope and placed in the keeping of some disinterested person, who will deliver it according to his instructions endorsed upon the envelope, in substantially the following form:

Escrow Instructions.

To —— ———:

You are instructed to deliver the enclosed deed to —— —— or order, upon his payment to me, or depositing to my credit at the ——— Bank of ——, the sum of ——— Dollars, on or before the —— day of ——, A D. 188—. If payment as aforesaid shall not be made, you will return said deed to the undersigned. —— ———.

Date.

A Power of Attorney—to sell, etc., may be used, but unless expressly made irrevocable, or if not coupled with an interest in the property may be revoked at any time.

Prospecting Contracts.—These are quite common and should be carefully drawn. The following form will answer for a guide:

I, A. B., in consideration of the supplies, tools and general prospecting outfit furnished me by C. D., and for the sum of —— —— dollars, to be paid as follows, viz: ———————— ———————————————— Have agreed and do hereby agree with the said C. D. to prospect diligently for lodes and placers in the county, (or counties) of ———, in the State of ————, and to locate and develop all discoveries, which, in my best judgment, shall be worth locating, in the joint names of myself and the said C. D. in equal undivided shares. All expenses of survey and record shall be paid by the said C. D. And the said A. B. agrees to devote his entire time and attention to prospecting for, locating and developing mining claims as aforesaid.

This contract shall be in force from this date until the ——— day of ———, 188—, or until cancelled by the mutual consent of the parties hereto. (Signed,) A. B.

I agree to terms above written. C. D.

Dated, ——— ———.

Record.—The contract should be recorded in the county, or counties, where the prospecting is to be done, for the pupose of giving notice of the interest of the party furnishing the grubstake in all claims located by the prospector.

Will be Enforced.—A contract to prospect for mines on joint account will be enforced; and a decree was given, directing the conveyance to C. of an interest of one-half in a mine located by S. in his own name, upon a finding that the claim was located under the terms of an existing contract that the claim should belong to S. and C. jointly.

Sears *vs.* Collins, U. S. Circuit Court for Colo., April term, 1881. Law Reporter, Vol. 1, p. 489.

Record of Deeds, etc.—Notice.

Sec. 178. Deeds, bonds, and agreements in writing, for the conveyance or encumbering of real estate, or any interest therein, shall be deemed from the time of being filed for record, notice to subsequent purchasers or encumbrancers, though not acknowledged or proven according to law, but neither the same, nor the record thereof, shall be read as evidence, unless subsequently acknowledged or proved according to law, or unless their execution be otherwise approved in the manner required by the rules of evidence applicable to such writings, so as to supply the defects of such acknowledgment or proof; this section shall apply as well to all such deeds, bonds and other writings heretofore recorded, as to those hereafter to be recorded.—*Gen. Laws Col.*

THE MINING LAWS OF ARIZONA.

ACTS RELATING TO MINES.

Note.—This chapter is in place of chapter fifty of the Howell code, which has been repealed.

An Act allowing persons in the Military Service of the United States and of this territory to hold mining claims.—Approved November 9, 1864.

3109. Section 1. All persons in the military service of the United States or this territory shall be allowed to locate claims on mineral lodes or

veins in the limits of this territory, subject to the requirements of the mining laws of this territory, and shall be protected in the possession of the same, and shall have the same rights in all respects in regard to such claims as like persons not in the military service.

3110. SEC. 2. All the laws of any mining district contrary to the spirit and provisions of this act are declared to be null and void, and shall not be evidence in any court having jurisdiction of mining suits in this territory.

SEC. 3. This act shall take effect and be in force from and after its passage.

An Act of placer mines and mining.—Approved December 30, 1865.

3111. SECTION 1. It shall be lawful for any person, company or association who shall place upon the mineral lands of this territory commonly called placer mining grounds, a pump or pumps, having a capacity sufficient to raise at least one hundred gallons of water per minute, with an engine or other power attached thereto, of sufficient power to work the same, with the *bona fide* intention of working the said placer grounds for the purpose of extracting the gold therefrom, to locate an amount of said placer grounds equal in extent to one quarter section, in such form and direction as he or they may elect; *Provided*, That said loca-

tion shall in no case be more than one mile in length, nor less than one quarter of a mile in width; and, *Provided*, That said machinery shall be used at least three months in each year for raising water to extract the gold from said grounds, and the presence of said machinery upon said grounds shall be the only evidence of title to said grounds; but in no case shall this act be so construed as to mean placer grounds which can be worked by water brought in ditches or flumes from any stream or other deposit of water; and said locations shall not in any case be made upon any grounds in the possession of any miner or miners at the time of location.

3112. SEC. 2. This act shall only apply to the county of Yuma.

SEC. 3. This act shall take effect and be in force from and after its passage.

An Act providing for the location and registration of mines and mineral deposits, and for other purposes.—Approved November 5, 1866.

DISTRICT RULES—RECORD.

3113. SECTION 1. The mining districts heretofore created in the several counties of this territory are hereby authorized and empowered to make all necessary rules and regulations for the location, registry and working of mines therein; *Provided*, That all locations and registrations of mines and mineral deposits hereafter made in any of the said

districts shall be transmitted to the county recorder for record within sixty days after the same shall have been located.

RECORDS—FEES.

3114. SEC. 2. The county recorders of the several counties are authorized and required to procure suitable books in which the records of all mines and mineral deposits shall be kept, which said books shall be paid for out of the county treasury, and they shall receive for their services herein the following fees: For recording and indexing each claim not exceeding one folio, one dollar; and for each additional folio, twenty cents.

VESTED RIGHTS.

3115. SEC. 3. Nothing in this act shall be so construed as to affect the claims to mines and mineral deposits heretofore located and duly recorded.

3116. SEC. 4. The claim of the territory to all mining claims heretofore located is hereby abandoned, and the same are hereby declared open to relocation and registry; *Provided*, That nothing herein contained shall be so construed as to affect mining claims herefore sold and disposed of by the territory.

PLACERS.

3117. SEC. 5. Nothing in this act shall be construed to apply to placer mines or mining, or other mineral deposits other than those commonly called veins or lode mines.

Acts Repealed.

3118. Sec. 6. Chapter fifty, of the Howell code, entitled, "Of the registration and government of mines and mineral deposits," as well as all other acts or parts of acts in conflict with the provisions of this act are hereby repealed.

Sec. 7. This act shall take effect and be in force from and after the first day of January, A. D. 1867.

An Act to provide for the segregation of mining claims.—Approved September 30, 1867.

Partition of Claims.

3119. Section 1. That whenever any one or more joint owners or tenants in common of gold, silver, copper, or mineral-bearing ledges or claims may desire to work or develop such ledges or claims, and any other owner or owners thereof shall fail or refuse to join in said work, after due notice of at least thirty days, given by publication in one newspaper printed in the county in which said ledges or claims are located, and if none be printed in said county, then in any newspaper printed in the territory, said notice to have publication in four successive weeks of said paper, said other owner or owners may, upon application to the district court of the district wherein the ledge or claim is situated, cause the interests of said parties so refusing to be set off or segregated as hereinafter set forth.

3120. SEC. 2. The owner or owners of any mineral-bearing ledge or claim after the expiration of said thirty days' notice having been given, may, if the party or parties notified fail or refuse to join in the working or developing said ledge or claim, apply to the district court of the district wherein the ledge or claim may be situated, for a partition or segregation of the interest or interests of the party or parties so failing or refusing to join.

3121. SEC. 3. The party or parties so applying shall set forth the fact that the said parties have been duly notified, in accordance with section one of this act, and that said party or parties have failed or refused to join in said work; all of which shall be sustained by the oath or affirmation of one or more of the parties applying; and, upon such application being made, the clerk of the said court shall post a notice at the office of the county recorder, and in two other conspicuous places within the district, stating the application, and notifying the parties interested, that unless they appear within sixty days, and show good cause why the prayer of the petitioner should not be granted, that the same will be granted if good cause can be shown.

3122. SEC. 4. At the expiration of said sixty days, if the party or parties notified do not appear and show good cause why the prayer of the petitioner should not be granted, the court shall appoint two commissioners to go upon the ground and segre-

gate the claims of the parties refusing to join; and in case they do not agree, they to choose a third party; and said commissioners shall make a report in writing to said court, who shall issue a decree in conformity with said report, which shall be final, except appeal be taken to the supreme court within thirty days after issuance thereof.

3123. SEC. 5. The provisions of this act shall not apply to the counties of Yavapai and Pima, and the county of Yuma.

3124. SEC. 6. All acts and parts of acts in conflict with the provisions of this act are hereby repealed.

SEC. 7. This act to take effect and be in force from and after its passage.

An Act Supplementary to Chapter XXXV., Howell Code, "Of the Limitation of Actions." Approved November 5, 1866.

ACTIONS, WHEN BARRED.

2111. SECTION 1. No action for the recovery of property in mining claims, or for the recovery of possession thereof, shall be maintained unless it appear that the plaintiff, his ancestor, predecessor, or grantor was seized or possessed of the premises in question within two years before the commencement of the action.

2112. SEC. 2. No cause of action or defence to an action, founded upon the title to property in mining claims, or to the rents or profits out of the

same, shall be effectual unless it appear that the person prosecuting the action, or making the defense, or under whose title the action is prosecuted or the defense is made, or the ancestor, predecessor, or grantor of such person, was seized or possessed of the premises in question within two years before the commencement of the act in respect to which such action is prosecuted or defence made

2113. SEC. 3. All acts or parts of acts in conflict with this act are hereby repealed.

SEC. 4. This act shall take effect and be in force from and after its passage.

An Act Conferring Jurisdiction of all Mining Claims on the District Court. Approved December 30, 1865.

DISTRICT COURTS, JURISDICTION.

Be it enacted, etc.: 2366. SECTION 1. The district courts of said territory shall have exclusive original jurisdiction of all suits and proceedings relating to mines and mineral and auxiliary lands, and the registry, and denouncement of the same, and all the jurisdiction, power, and authority conferred upon the probate courts and probate judges by chapter fifty of the Howell code, entitled, "Of the Registry and Government of Mines and Mineral Deposits," or otherwise, are hereby conferred upon the district courts and district judges respectively.

2367. SEC. 2. That section two of title one of said chapter is hereby repealed, and also all the

other provisions of said chapter, conferring jurisdiction upon the probate courts and probate judges, over suits and proceedings relating to mines, mineral, and auxiliary lands, as well as other acts and parts of acts inconsistent with the provisions of this act.

2368. SEC. 3. All suits and other proceedings in said probate courts, now pending therein, and over which said probate courts have jurisdiction, are hereby transferred to, and shall be continued in, the district court of the county in which said suits and proceedings are now pending.

2369. SEC. 4. The clerks of the probate courts shall, within thirty days after the publication of this act, transfer to and file in the office of the district courts of their respective counties, all records and papers in suits and proceedings relating to mines, mineral, and auxiliary lands, which records and papers shall be kept and filed by the clerks of said district courts, and when so transferred and filed, said suits and proceedings shall be proceeded with as though commenced in said district courts; *Provided*, That in counties where there shall be no clerks of the district courts, the records and papers shall be transferred and filed as aforesaid within thirty days after the appointment of said clerks and their acceptance thereof.

SEC. 5. This act shall take effect and be in force from and after its passage.

A Justice of the Peace has not Jurisdiction in Mining Cases.

3059—SEC. 623. No action in regard to mining claims shall be maintained before any justice of the peace.

THE MINING LAWS OF NEW MEXICO.

General Laws of 1876; Chapter XXXVIII.

An Act to Regulate the Manner of Locating Mining Claims and for Other Purposes.

CONTENTS.

SECTION 1. Location—bounds to be marked, notice of name of locator; make record in three months.

SEC. 2. Record books must be provided.

SEC. 3. Value of labor on mining claims defined.

SEC. 4. Locations heretofore made, there being no adverse claims, may be filed within six months.

SEC. 5. Ejectment in mining claims and real estate.

SEC. 6. Repeals former acts.

Be it enacted by the Legislative Assembly of the Territory of New Mexico: SECTION 1. Any person or persons desiring to locate a mining claim upon a vein or lode of quartz or other rock in place bearing gold, silver, cinnabar, lead, tin, copper or other valuable deposit, must distinctly mark the location on the ground so that its boundaries may be readily traced; and post in some conspicuous place on such location, a notice in writing stating thereon the name or names of the locator or locators, his or their intention to locate the mining claim, giving a description thereof, by reference to

some natural object or permanent monument as will indentify the claims; and also within three months after posting such notice, cause to be recorded a copy thereof in the office of the recorder of the county in which the notice is posted; and provided no other record of such notice shall be necessary.

SEC. 2. In order to carry out the intent of the preceding section, it is hereby made the duty of the probate judges of the several counties of this territory, and they are hereby required to provide at the expense of their respective counties, such book or books as may be necessary and suitable in which to enter the record hereinbefore provided for. The fees for recording such notices shall be ten cents for every one hundred words.

SEC. 3. In estimating the worth of labor required to be performed upon any mining claims, to hold the same by the laws of the United States, in the regulation of mines, the value of a day's labor is hereby fixed at the sum of four dollars: *Provided, however*, That in the sense of this statute, eight hours of labor actually performed upon the mining claim shall constitute a day's labor.

SEC. 4. All locations heretofore made in good faith, to which there shall be no adverse claims, the certificate of which locations have been or may be filed for record and recorded in the recorder's office of the county where the location is made within six months after the passage of this act, are

hereby confirmed and made valid. But where there may appear to be any such adverse claim, the said locations shall be held to be the property of the person having the superior title or claim, according to the laws in force at the time of the making of the said locations.

SEC. 5. An action of ejectment will lie for the recovery of the possession of a mining claim, as well also of any real estate, where the party suing has been wrongfully ousted from the possession thereof, and the possession wrongfully detained.

SEC. 6. That "an act concerning mining claims," approved January 18, 1865, and an act amendatory thereof, approved January 3, 1866; also, an act entitled an act to amend certain acts concerning mining claims in the territory of New Mexico, approved January 1, 1872; be and the same are hereby repealed: *Provided*, That no locations completed or commenced under said acts shall be invalidated or in any wise affected by such repeal.

SEC. 7. That this act shall take effect and be in full force from and after its passage.

Approved January 11, 1876.

FORM OF DISTRICT RULES AND ORGANIZATION.

The following form will serve as a guide for the organization and proceedings of mining districts:

BOUNDS AND LAWS OF ——— DISTRICT.

By virtue of a notice duly signed and posted on the —— day of ——— 188–, a meeting of miners was held at the place of post-

ing notice on the —— day of ——— 188–, at which place and time the ——— Mining District was formed. Mr. —— —— acted as chairman, and —— —— acted as secretary.

Following are the rules passed to govern the district:

1. The mining district shall be called the ——— Mining District.

2. The district shall embrace the following described and bounded territory: commencing at the easterly end of the ——— mine and running west of north along the eastern boundary of the ——— Mining District to the western end of the ——— mine in the ——— Mining District, ——— mountains, etc., (——)

3. The county recorder of ——— county, by virtue of his office, shall be *ex officio* recorder of this district.

4. In the location of mines in this district, copies of the notices of location must be placed on the mines before any legal record of the same can be made by the recorder. Any location not so made shall be null and void.

5. All location notices must be filed in the office of the recorder within —— days after the actual date of location.

6. The county recorder shall be entitled to a fee of —— for each and every notice recorded by him.

7. The records of ——— county are hereby adopted as the *bona fide* records of this district.

8. The annual meeting of the voters of this district shall take place and be holden on the first Monday in May in each year.

9. Ten days prior to the date of holding the annual meeting the recorder shall place, or cause to be placed or posted, in three of the most conspicuous places in said district a notice stating the time when, and the place where, said meeting shall be holden and shall designate in such notice that the meeting shall be holden for the purpose of transacting all and every kind of business which may be properly brought before it.

10. At each annual meeting the voters of the district shall elect their chairman and secretary who shall hold office for one year or until their successors are appointed.

11. The chairman and secretary of this meeting shall hold office from the —— day of ——— for one year or until their successors are elected.

12. The secretary of each meeting shall keep full and complete records of the minutes and proceedings of their respective meetings and cause the same to be placed on record in the office of the county recorder.

13. The rules and regulations shall not be altered or in any way changed, except at a regular annual meeting of the miners of said district, and then only by a legal vote of two-thirds of all the voters present and voting.

14. Any and all persons who are citizens of the United States of America, or who have declared their intention to become such, and own shares of stock or interests in any mine in the district or who have worked in any mines in the district for the twenty days preceding such meeting, shall be considered legal voters and entitled to vote at a miners' meeting.

15. Five dollars per day shall be allowed for each and every eight hours' work performed upon a mine for the purpose of holding title, or performing the necessary amount of work for a patent, and no other expenses shall be considered as expended for the purpose of holding or perfecting title.

16. All mines hereafter located in this district shall be marked by end and corner monuments or stakes, at least eighteen inches in height above ground, with sufficient marks placed in or upon them to show which end or corner of the claim they designate; if stakes are used, they must be sunk at least six inches in the ground, and have a blaze and figures upon one side.

17. All locations made and recorded prior to the adoption of these rules and regulations, are hereby legalized, so far as they may not conflict with the same.

18. These rules, regulations and by-laws shall be filed and recorded in the office of the County Recorder of ——— county, and shall be in full force and effect from and after this ——— day of ——— 188–.

19. The foregoing proceedings, and the proceedings of any subsequent meeting, shall be signed by the chairman and secretary and transmitted by them to the county recorder without delay.

[Signed] ——— ———, Miner.
——— ———, "
——— ———, "
——— ———, "

I certify that the foregoing is a correct statement of the proceedings had, and of the laws adopted for the ———— Mining District, this —— day of ——— 188–.

——— ——— Secretary.

——— ——— Chairman.

HOW TO PROSPECT.

(*From Blake's Hand-Book of Colorado.*)

1. Examine the gravel and boulders of the mountain streams, and note carefully the structure and character of the gravel wash. This will reveal the geological formations that are intersected by the stream. Try the sands at the head of the gravel bars for free gold, or for any chrystalized minerals. If the structure of the quartz boulders or other vein stones are favorable, go up the stream until the geological zone is found that has produced the quartz or other metal-bearing minerals. Then follow the supposed metal-bearing zone on its line of strike, and make especially careful examinations wherever eruptive dykes are found intersecting the formation.

2. When a lode or vein is found, note carefully its relation to the country rock, especially any differences in the opposite walls of the vein. Then follow it on the line of outcrop, and note carefully those points where the best ores are seen, so as to determine the position of the best ore chutes before making any location on the lode.

3. The first work should consist of shallow cuts across the lode at intervals of 50 to 100 feet, or if the vein is small and partially covered by soil and debris, a trench along the line of outcrop is preferable. If the surface tracing is satisfactory, and the true line of strike has been determined, then survey your claim and stake off the boundaries according to the requirements of the United States laws.

4. The work of exploring the vein under ground is the next thing in order. To do this intelligently you must select that point on the line of outcrop where the best ore is found, then sink a shaft on the lode following the angle of dip, keeping both foot wall and hanging wall exposed if possible. If the lode is too wide for this to be done, then follow the best ore streak of the vein itself, and at every fifty feet in depth make crosscuts to the walls of the vein.

5. After 100 feet deep has been reached, run levels each way from the shaft on the line of the vein in order to determine the extent or spread of the ore chute or chimney on the horizontal line. When the limit of the ore body on the horizontal line has been ascertained then sink 100 feet more and drift right and left as before. If more than one chimney of ore is found on the line of the vein, a shaft should be sunk on it, and drifts run as above stated, being careful to confire all the exploring work within the walls of the vein itself.

6. When enough has been done to prove the character, size and quality of the vein, it will then be time to determine the position, character and extent of the "dead-work" necessary to work the mine to the deep. These questions should be settled by careful surveys made in the light of all the local facts and surroundings, such as the geological structure of the country rock, the probable amount of water to be raised, the lowest point of drainage by adit or level, and the most convenient point for delivery of the ores to the surface, etc.

The last part of the preliminary exploration of any mine is to determine, by actual tests, what are the best methods of reduction, and the extent and kind of reduction works needed, etc.

7. After all these preliminary facts have been thoroughly ascertained and clearly defined, the unavoidable risks of mining will have been fully met and overcome. All subsequent operations are simply matters of skill and business management and the capitalizing of the mine becomes a mere matter of business detail.

The requirements are as follows:

1. The preliminary exploration must have ore enough cut and under-run, or otherwise exposed, to give at least two years' work for reduction work of an extent sufficient for the annual average output of ore.

2. The reduction works must be suited for the best treatment of the ore.

3. The exploration of the mine must be pushed ahead of the extraction of ore, so as to expose at least one ton of ore in new ground for every ton extracted from the previously explored ground.

4. Before erecting reduction works, the ore exposed in the mine should be so thorougly tested as to guarantee a net profit sufficient to pay the whole cost of such work.

5. The mine being well opened, and the reduction works, or plant, established, the general success of the enterprise must depend upon the efficiency of the general business management.

INDEX.

Abandonment.
is a question of intention, page 58.

Adit.
discovery, Col. statute, 54.
definition, 54.

Adverse Claims.
U. S. statute, 28.

Affidavits and Proofs.
proof of citizenship, U. S. statute, 14.
how verified, U. S. statute, 36.
of labor, Col. statute, 57.

Agent.
may apply for patent, (amendment) 28.

Agricultural Lands.
separation of, U. S. statute, 39.
entry of, when cancelled, 10.

Aliens.
cannot locate claims, 15.

Amendments.
U. S. statute, 24, 28.

Angles and Variations, 19.

Annual Labor.
U. S. statute, requiring, 22.
amendment concerning, 24.

Annual Labor—Continued.
none required after application for patent, 25.
computation of, 25.
neglect to perform, 25.
tunnel work, U. S. statute, (amendment) 24.
affidavit of, to be recorded, Col. statute, 57.

Apex or Top of Vein.
U. S. statute, 15.
definition, 16.

Arizona.
mining laws of, 84–92.
persons in military service, 84.
placer mines and mining, 85.
location and registration, 86.
district rules, 86.
vested rights, 87.
acts repealed, 87.
partition of claims, 88.
actions, when barred, 90.
district courts, jurisdiction of, 91
district laws, 95—97.

Bond.
see Mining Bond.

Boundaries.
U. S. statute, 15.
staking, Col. statute, 53.

Citizenship.
proof of, U. S. statute, 14.
no distinction of sex, 15.

Claim.
see Mining Claim.

Coal Lands.
entry of, 41.
U. S. statute, 41–44.
settlers preferred, 41.
land office proceedings, 42.
entry limited, 43.
conflicting claims, 43.
vested rights, 44.

Consideration.
in contracts, 81.

Contracts.
relating to real estate, must be in writing, 81.
of sale, form of, 82.

Conveyances.
fraudulent, Col. statute, 72.
mining claims conveyed as real estate, 79.
warranty, 79.
mining deed, form, 79.
not in writing, 80.
mining bond, 81.
escrow instructions, form, 82.
contract to sell, 82.
prospecting contract, form, 83.

Co-owners.
U. S. statute, 22.
forfeiture by, 25.
are not partners, 25.
relocation by one of several, 25.

Corporations.
see Stock Companies.

County Legislation, 14.

Courts of Colorado.
U. S. courts, 103.
supreme court, 104.
district courts, 105–108.
Crimes.
see Penal Laws.
Deed.
mining, form of, 79.
record of, Col. statute, 83.
Dip.
definition, 16.
vein may be followed beyond side lines
on, U. S. statute, 15.
Col. statute, 55.
location on, 17.
Discovery, 12.
no location can be made until, U. S. statute, 11.
shaft, Col. statute, 55.
stake, 53.
open cut, tunnel, adit, Col. stat., 54.
gives title, 54.
within another's claim, 18.
District Courts (Col.).
terms of, etc., 105–108.
District Rules, 10.
form of, 95.
statutes relating to, 22, 67, 68, 86.
Ditches, 62.
crossing private lands, 63.
patents subject to, U. S. stat. 39.
Easements.
U. S. statute, 38.
Col. statutes, 55, 63.

End Lines.
must be parallel, U. S. statute, 11.
claimant cannot go beyond, U. S. stat. 15, Col. statute, 55.

Errors.
correction of, in patent, 30.
correction by relocation, 20, 56.
width of claim intended to cover, 19.

Escrow Deed, 82.

Exception.
of certain States from Act of 1872, U. S. statute, 40.

Exemption.
of mines and claims from taxation, Const. Col. 64.

Flumes and Ditches, 62.
ditch notice, 63.
record, 63.

Forcible Dispossession.
see Jumping Claims.

Forfeiture.
by co-owner, 25.
neglect of annual labor, 25.

Forms.
location certificate, lode, 50.
location notice, lode, 54.
location notice, placer, 62.
location notice, tunnel, 21.
location notice, ditch, 63.
mining deed, 79.
contract of sale, 82.
escrow instructions, 82.
prospecting contract, 83.
district rules, 95.

Fraudulent Scales, 71.
" *Undervaluation of Ore*, 72.
" *Conveyances*, 72.
" *Dividends*, 75.

Homesteads.
on mineral lands, U. S. statute, 39.

Homicide.
in jumping claims, 71.

Indian Reservation.
locations in, 10.

In place.
definition, 14.

Intersecting Veins.
U. S. statute, 36.
Col. statute, 69.

Jumping Claims, 71.

Land Districts.
U. S. statute, 40.
in Colorado, 40.

Length of Claims.
U. S. statute, 11.
Col. statute, 49.

Location of Claims.
requisites of, U. S. statute, 11.
requisites of, Col. statute, 52.
diagrams of, 17, 18, 19, 53.
parallel end lines, 17.
vein must be in centre of, 19, 52.
discovery notice, 54.
date of, 54.
staking boundaries, Col. statute, 53.

Location of Claims—Continued.
prior to dicovery of mineral, 50.
by a minor, 14.
on Sunday, 14.

Location Certificate.
requisites of, Col. statutes, 50, 51.
construction of, Col. statute, 55.
failure to record, 51.
when void, 51, 52.
form of, 50.
record of, before discovery, 50.
variance between stakes and, 54.
one for each claim, Col. statute, 59.

Lode.
definition, 9.
within placer, U. S. statute, 33.
see Vein and Location.

Mandatory Writ, 71

Mill Sites.
U. S. statute, 37.
not adjoining lode, 37.
joint entry of, 38.
location of, 38.
must adjoin side of lode claim, 37.

Mineral Deposits.
what embraced, 10.

Mineral Lands.
reserved from sale, U. S. statute, 9.
open to exploration and purchase, 9.
what are, 9.

Miner's Lien.
when allowed, Col. statute, 70.

Mining under Surface Improvements.
Col. statute, 56.

Mining Claim.
definition of, 12.
extent of, U. S. statute, 15.
" " Col. statute, 55.
is real estate, Col. statute, 66.
" " New Mex. statute, 94.
conveyance of, 79, 80.

Mining Companies.
Col. statute, 77–78.
two classes of stock, 77.
stock issued in payment of property, 77.
assessable stock, how assessed, 78.
sale of delinquent stock, 78.
directors, 78.
consolidating, 78.
see Stock Companies.

Mining Districts, 11.

New Mexico.
mining laws of, 93–95.
location of claims, record, 93.
value of labor fixed, 94.
vested rights, 94.
ejectment in mining claims, 94.
repeal of former acts, 95.
district rules—forms, 95.

Open Cut, Cross-cut, etc.
in place of discovery shaft, Col. stat., 54.

Ore Buyers.
requirements of, Col. statute, 72.

Partners.
co-owners are not, 25.

Patent.
application for, U. S. statutes, 26–30.
will issue to purchaser, 31.
correction of errors in, 30.
intersecting, 31.

Penal Laws.
fraudulent scales, 71.
keeping proceeds of ore, 71.
salting ore, 71.
jumping claims, 71.
homicide by mine-jumper, 71.
removing location marks, 71.
fraudulent undervaluation of ore, 72.
" conveyances, 72.

Placers.
definition of, 9.
open to entry and patent, U. S. stat.. 31.
on surveyed lands, U. S. statute, 31.
on unsurveyed " " " 32.
title under statute of limitations, 33.
containing lode, U. S. statute, 33, 34.
limited to 160 acres, U. S. statute, 32, 34.
location of, 62.
location notice, 62.
Col. statutes, 59–64.
annual labor on, 60.

Possession.
law of, 12, 51, 53.
U. S. statute, 10, 15.
Col. " 66.

Power of Attorney, 83.

Proof of Citizenship.
U. S. statute, 14.

Prospecting for Lodes.
directions, 98–101.

Prospecting Contract.
form of, 83.
will be enforced, 83.

Record.
of lode claims, Col. statute, 50.
of placer " " " 59.
of tunnel sites, " " 59.
of affidavit of labor, " 57.
of deeds, etc., Col. statute, 83.

Relocation.
by owner, Col. statute, 56.
of old claims, Col. statute, 57.
of abandoned claims, Col. statute, 58.

Removing Location Marks.
penalty for, 71.

Reservations.
locations within, 10.

Rock in Place.
definition, 14.

Salting Ore.
penalty for, 71.

Side Lines.
when vein confined to, 18.
diagram, 19.
see Dip.

Stakes.
six required, Col. statute, 53.
failure to keep in position, 53.
variance between record and, 54.

State and Railroad Grants.
mineral lands not included, U. S. statute, 40.

Stock Companies.
objects of, 73.
certificate required, 73.
corporate powers, 74.
stock is personal property, 74.
directors and officers, 74.
by-laws, 75.
liability of stockholders, 75.
stockholders have access to books, 75.
stock issued in payment of property, 75.
reports, 75.
fraudulent dividends, 75.
misrepresentation by officers, 75.
duties of secretary, 76.
foreign corporations, 76.
stockholders may demand statement, 76.
doing business in otherstates, Col. stat., 77.
see Mining Companies.

Supreme Court, (*Col.*) 104.

Survey.
for patent, U. S. statute, 30.

Surveyors.
appointment of, U. S. statute, 35.
when entitled to lien, 71.

Tailings,
Col. statute, 64.

Taxation.
exemption of mines from, Const. Col., 64.
net proceeds of mines, 65.

Timber on Mineral Lands.
U. S. statutes, 44–47.
free to miners, etc., 44.
land office inspection, 45.
penalties, 46.
rules and regulations, 46.

Title to Mining Claims.
nature and extent of, U. S. statute, 15.
Col. statute, 55.

Tunnel Sites.
U. S. statute, 20.
construction of statute by land office, 20.
judicial construction, 21.
width of, 21.
form of location notice, 21.
record of, Col. statute, 21, 59.
cannot be patented, 21.
location of veins cut, 21.

Vein, Lode, or Ledge.
definition, 9, 12.
course of true vein, 20.
intersecting veins, U. S. statute, 36, Col. statute, 69.
uniting veins, U. S. stat., 36, Col. stat., 69.
see Location and Dip.

Vested Rights.
respected, U. S. statute, 40.
" Arizona statute, 87.
" New Mexico statute, 94.

Warranty.
of title to mining claims, 79.

Water Rights.
U. S. statute, 38.
Col. statute, 63.

Way.
right of, Col. statute, 63, 64.

Width of Claims.
U. S. statute, 11.
Col. statute, 49.

SUPPLEMENT.

NOTES ON THE MINING LAWS OF THE UNITED STATES, WITH AMENDMENTS SINCE SEPTEMBER, 1881.

Sec. 2324. **In estimating the value of labor** performed on a mining claim during any year for the purpose of holding the same, the following classes of testimony were admitted in a recent case, viz: (1) The number of days of labor performed, (2) the usual rate of wages per day for similar labor in the vicinity at the same time, (3) the amount and character of the work, including kind of rock, etc., (4) the opinion of experts as to the value per foot of the work done, and (5) the amount actually paid for the work and improvements on the mine in question. Spiegelberg *vs.* Clark, M. L. 421 (S. C., N. M.) Work done outside the claim, if it be of a character to develop or improve the same, will be considered as work done upon the claim.

Harrington *vs.* Chambers, 1 P. R. 362 (Utah.)

Where claims are "held in common," the expenditure may be made upon any one claim (Sec. 2324), but it is held that the expenditure must be such as will develop or improve each of the claims so held.

Jackson *vs.* Roby, 3 S. C. R. 301. (And see notes under §2329 post. for expenditure on placers.

Co-owners—Forfeiture. Where more than the annual expenditure ($100) has been made on a claim, forfeiture cannot be claimed against a co-owner for his failure to contribute his proportion of such excess. But he might be liable as a partner for such share. And where all of several owners of a claim neglect to

*NOTE.—The sections heading the following notes refer to the U. S. Statutes printed in the preceding pages, and the notes are given under the section to which they relate. Additional contractions used in the supplement and not familiar, are as follows:

U. S. R.—United States Reports.
S. C. R.—Supreme Court Reporter (U. S.) St. Paul.
F. R.—Federal Reporter (U. S. Circuit Courts.)
W. C. R.—West Coast Reporter, San Francisco.
P. R.—Pacific Reporter, St. Paul.
M. L.—Copp's Mineral Lands.

make the required annual expenditure, one of them cannot by relocating the claim in his own name acquire the title to the exclusion of his co-tenants, since the Statute prescribes the course to be pursued in such case.

"A mining partnership is held to exist where two or more persons unite and co-operate in the working of a mine."

Charles *vs.* Eshelman, 5 Colo. 107.

And it is not necessary that the members should own the mine.

Manville *vs.* Parks, et. al., 7 Colo.

The Powers of Members and managers of such companies to bind the others, are limited to the performance of such acts, in the name of the partnership, as may be necessary to the transaction of its business, or which are usual in like concerns. Id.

Kahn *vs.* Central Smelting Co , 102 U. S. 641.

Duryea *vs.* Burt, 28 Cal. 569, and cases cited.

Sec. 2325. **Patents.** The title to unpatented mining claims is only possessory and is conditional upon compliance by the locator with the laws and regulations governing it. A patent when issued relates back to original location and discovery, and so cures all defects which may have existed in the possessory title, and cuts off all conflicting claims. Hence it is always advisable to patent claims as soon as their value may justify the required expense.

Prior Liens not Impaired. But a patent does not extinguish or impair any lien (e. g., a mortgage or miner's lien) which may have attached to the claim prior to issuance of the patent.

U. S. Stat. Sec. 2332.

The Cost of patenting a mining claim varies according to the character of the land, whether lode or placer, the quantity of land and the interference with other claims. The government price for lode claims is five dollars per acre, and for placer claims two dollars and a half per acre. The total cost, including survey and attorney's fee, averages about $200.

Patent Limited to one Lode Claim. "No application (for patent) will be received or entry allowed, which embraces more than one lode location." From L. O. Circular, June 8, 1883. But see notes under Placers *post.*

Amendment (1).

Sec. 2326. An Act to amend section twenty-three hundred and twenty-six of the Revised Statutes, relating to suits at law affecting the title to mining claims.

Be it enacted, etc., That if, in any action brought pursuant to section twenty-three hundred and twenty-six of the Revised Statutes, title to the ground in controversy shall not be established by either party, the jury shall so find, and judgment shall be entered according to the verdict. In such case costs shall not be allowed to either party, and the claimant shall not proceed in the land office, nor be entitled to a patent for the ground in controversy, until he shall have perfected his title.—*March 3, 1881.*

Amendment (2).

An Act to amend section twenty-three hundred and twenty-six of the Revised Statutes, in regard to mineral lands, and for other purposes.

Be it enacted, etc., That the adverse claim required by section twenty-three hundred and twenty-six of the Revised Statutes may be verified by the oath of any duly authorized agent or attorney-in-fact of the adverse claimant, cognizant of the facts stated, and the adverse claimant, if residing or at the time being beyond the limits of the district wherein the claim is situated, may make oath to the adverse claim before the clerk of any court of

record of the United States or of the State or Territory where the adverse claimant may then be, or before any notary public of such State or Territory. (Sec. 2335.)

SEC. 2. That applicants for mineral patents, if residing beyond the limits of the district wherein the claim is situated, may make any oath or affidavit required for proof of citizenship before the clerk of any court of record, or before any notary public of any State or Territory.—*April 26, 1882.*

Sec. 2329. **An Annual Expenditure of $100** is required to be made upon each placer claim, as well as upon lode claims.

Carney *vs.* Ariz, G. M. Co., 1 W. C. R. 851 (Ariz.)

A Colorado Statute (p. 61 ante) assumes to regulate the matter of yearly expenditure upon placer claims, probably upon the ground that the requirements of the U. S. law in that respect apply only to lode claims. But if, as is held in the case above cited the U. S. law concerning annual expenditure upon lode claims applies equally to placers, it would be unsafe to follow the State Statute, in so far as it permits a yearly expenditure of less than $100 upon any claim, however small.

When Placer Claims are held in common, the annual expenditure may be made upon any one claim. Sec. 2324 ante. But the expenditure must be for the purpose of developing all of such claims and not merely for the development of one claim, without any reference to the development of the others.

Jackson *vs.* Roby, S. C. R. 301.

Just what is meant by "claims which are held in common" is not clear, i. e. whether reference is made to common owners of several claims, or to several claims which may be worked by a common system, or to both. It is held, however, that the provision applies to several adjoining placer claims or locations belonging to one person. Jackson *vs.* Roby, supra,—although it was also held by the same court, that where several adjoining locations

are acquired by one person, they constitute but one claim, from which it would follow (contrary to the decision in Jackson *vs.* Roby) that expenditure made upon any of the original locations or claims, would answer for the consolidated claim.

Smelting Co. *vs.* Kemp, 104 U. S. 636.

Amount allowed in One Patent. It is further held in the case last cited that the law imposes no limitation upon the number of contiguous claims or the quantity of ground, which may be included in one application for patent.

But a recent circular of the General Land Office provides that "No application by an association of persons for patent to a placer claim will be allowed to embrace more than one hundred and sixty acres; and not less than five hundred dollars' worth of work must be shown to have been expended upon or for the benefit of each separate location embraced in such applicttion. If an individual becomes the purchaser and possessor of several separate claims of twenty acres each or less, he may be permitted to include in his application for patent any number of such claims contiguous to each other, not exceeding in the aggregate one hundred and sixty acres; but upon or for the benefit of each original claim or location so embraced, he or his grantors must have expended the sum of five hundred dollars in improvements."

SEC. 2333. **"Known" vein defined.** The vein or lode referred to in this section as exempt from a grant or patent of premises in which such vein or lode may be embraced, means a vein or lode that has been located and developed and has definite boundaries.

Iron Silver M. Co. *vs.* Sullivan et. al. U. S. C. Ct. Colo. 16 F. R. 829.

McLaughlin *vs.* U. S., 107 U. S. R. 527.

When separate locations have been made by different locators of a placer and a lode contained therein, if application for patent is made by the placer claimant, the lode claimant may adverse, and should he fail to do so his claim will be limited in width to 25 feet on either side of the vein so located.

X. L. O. 18.

SEC. 2336. **Intersecting Veins.** The first part of this section has been construed as referring to the intersection of the veins, and not of the locations which may cross each other, and therefore as being partly in conflict with Sec. 2322 ante, which gives to the locator all veins which lie within the claim located, And this being a later section of the same act, is held to control the earlier section and to carve out from it an exception as to the cross leads, which may be located and held by a subsequent locator, saving only to the prior locator the immediate place of intersection of the veins.

Hall et. al. *vs.* Equator M. and S. Co., et. al. U. S. C. Ct. Colo.

The only other case in which the meaning of this statute has been considered by an appellate court seems to be that of Pardee *vs.* Murray et. al. 2 P. R. 16 (Mont.) which decides the question in the language of the statute and hence leaves us no wiser.

By regarding the word "vein," as used in this section, as synonomous with "location," which the wording seems to warrant, the other construction could be admitted, and the two sections reconciled. This view is adopted in the Land Office in issuing patents for intersecting locations. The surface ground in the interference being excepted from the second patent.

SEC. 2337. **Mill Sites. Land Office Regulations.** 74. In case the owner of a quartz-mill or reduction-works is not the owner or claimant of a vein or lode, the law permits him to make application therefor in the same manner prescribed herein for mining-claims; and after due notice and proceedings, in the absence of a valid adverse filing, to enter and receive a patent for his mill site at said price per acre.

75. In every case there must be a satisfactory proof that the land claimed as a mill-site is not mineral in character, which proof may, where the matter is unquestioned, consist of the sworn statement of the claimant, supported by that of one or more disinterested persons capable from acquaintance with the land to testify understandingly.

76. The law expressly limits mill-site locations made from and after its passage to *five acres*.

SEC. 2339. **Water Rights.** Important differences usually exist between water rights upon lands on which the running waters are useful for mining or irrigating purposes, and water rights upon lands, the streams of which are not required for such purposes. In the latter case the waters are incidental and appurtenant to the soil and would pass with a conveyance of the land. But in the former case the waters may become a separate and independent estate and in such case must be conveyed independently of the land.

43 Cal. 453.
Coffin et. al. *vs.* Ditch Co., 6 Colo. 443.
Barnes *vs.* Sabron, 10 Nev. 217.
Atchison *vs.* Peterson, 20 Wall, 507.

These rights are acquired originally by appropriation and may be lost by abandonment or disuse. Id. The manner of appropriation is regulated by local laws or customs, (see page 62.) The measure of such a water right is, in the first instance, the quantity which is actually diverted by means of ditches or otherwise for a beneficial use, and this quantity is usually measured and conveyed by the inch. (See "miner's inch," glossary.) The amount of water originally taken cannot be afterwards increased to the detriment of a subsequent appropriator of water in the same stream.

Atchison *vs.* Peterson, 20 Wall. 507.
Sieber *vs.* Frank, 2 W. C. R. 99.

Timber on Mining Claims. According to rulings of the Interior Department, the timber on a valid mining claim belongs to the locator, and must be protected by him against depredations, as in other cases of trespass upon private lands.

9 L. O. 164.
But see contra U. S. *vs.* Nelson, 5 Sawyer 68.

MINING LAWS OF COLORADO.

(Enacted since September 1881.)

Miner's Lien.

Abridged from the Act approved March 2, 1883. In force May 31, 1883 Gen. Stat. p. 662.

Liens Upon Mines. All persons who shall do work or furnish materials to any amount, by contract express or implied, with the owner, for the working or development of any mine, lode, mining claim, or deposit yielding minerals of any kind, shall have a lien upon such mine, lode, mining claim, or deposit, for the amount and value of the work so done, or materials so furnished, to the extent of the interest or claim of such owner thereof, at the time of the commencement to do such work or to furnish such materials, or at any time before the establishment of said lien by process of law.

Filing of Notice. The lien claimant shall file in the office of the clerk and recorder of the county wherein the mine or claim is situated, a statement containing,—

1st. A notice of intention to hold and claim a lien.

2d. A description of the property to be charged therewith.

3d. A verified statement of the indebtedness.

TIME OF FILING. Principal contractors shall file said statement within sixty days, and sub-contractors within forty days after the time when the last work shall have been done, or the last materials furnished by such contractors.

MAY BE CLAIMED BY SUB CONTRACTOR BEFORE COMMENCING WORK. Sub contractors may either, before, or at any time after commencing work, file a notice of their intention to hold and claim a lien, together with a description of the property to be charged and the probable value of the work to be done, or materials to be furnished, and shall thereupon have a lien, not exceeding the sum stated as the probable value of such work or materials.

LIEN DATES FROM COMMENCEMENT OF WORK. All such liens shall relate back to the time of the commencement of the work or furnishing of materials, and shall have priority over any and every lien or incumbrance subsequently intervening, and over prior liens, not recorded, or of which the lienor under this act had no notice.

ENFORCEMENT OF LIENS BY ACTION—LIMITATION. Within six months after the filing of the lien, action must be brought to enforce the same; otherwise the lien will be lost.

ASSIGNMENT OF LIENS. Liens may be assigned, either before or after the filing thereof, and the assignee may include the several liens in one statement and bring action thereon. The purpose so to do is a sufficient consideration for such assignment.

CONSOLIDATION OF LIENS AND ACTIONS—PROCEDURE. Lien claimants, when not contesting the claims of each other, may join as plaintiffs, in the same action, or separate actions may be consolidated upon motion of any party, or by the court upon its own motion, and lien claimants may also, by order of court, by motion and upon cause shown, be allowed to intervene and become parties to any such action.

The various rights of all the lien claimants, and other parties in any such action, shall be determined and incorporated in one judgment or decree. Each party who shall establish his claim under this act shall have a judgment against the party personally liable to him for the full amount of his claim so established in said decree, upon the property to which his lien shall have attached to the extent heretofore stated. The property shall be sold by order of court as in case of the foreclosure of mortgages, within the time and in the manner provided for sales on executions, and with the same right of redemption, as in cases of sales on execution. The proceeds of sale shall be applied to the satisfaction of such lien or liens, according to the rights of the several parties, and to the costs of suit, and the balance of proceeds, if any, shall be paid to the owner of the property.

If the proceeds fail to satisfy the lien or liens, the claimant may have execution against the owner for the balance due him.

RANK OF LIENS. Where several liens are claimed, as aforesaid, against the same property, they shall rank as follows, viz:

1st. Sub-contractors in the second degree,
2d. Sub-contractors in the first degree,
3d. Original contractors,

which shall be declared in the decree or judgment in the order named; and the proceeds of sale must be applied to each lien, or class of liens in the order of its rank.

AN ORIGINAL OR A PRINCIPAL CONTRACTOR is one who does work or furnishes material under a contract directly with the owner.

A SUB-CONTRACTOR IN THE FIRST DEGREE is one who does work or furnishes materials by contract with a principal contractor.

A SUB-CONTRACTOR IN THE SECOND DEGREE is one who does work or furnishes materials by contract with a sub-contractor of the first degree.

SURVEYORS AND ENGINEERS have a like lien and claim as other persons under this act, for the surveying and platting of mines, mining claims, lodes or mineral deposits.

LIEN ATTACHES TO WATER RIGHTS AND TO THE FRANCHISES OF CORPORATIONS. Said lien shall likewise attach to rights of water and rights of way pertaining to mines, mining claims, etc., and also to the franchises and charter privileges that may in any manner pertain to said specified property.

MINING LAWS OF ARIZONA.

(Enacted since September 1881.)

An Act to repeal an act providing for the taxation of the net proceeds of mines, approved February 9, 1877.

Be it enacted by the Legislative Assembly of the Territory of Arizona:—

SECTION 1. An Act entitled "An Act providing for the taxation of the net proceeds of mines," approved Feb. 9, 1877, is hereby repealed.

SEC. 2. This act shall take effect and be in force from and after its passage.

Approved Feb. 21, 1881.

An Act relating to mines and mining claims. (Right of way.)

Be it enacted by the Legislative Assembly of the Territory of Arizona:—

SECTION 1. Any person or persons who has or may hereafter locate a valid mining claim in this Territory under the laws of the United States or of the Territory of Arizona, shall be lawfully entitled to the right of way over all adjoining or adjacent mines or mining claims, for the purpose of transporting supplies, material or ores used upon or taken from the claim or claims so entitled to the right of way; and it shall be lawful, in the exercise of this right of way, to construct such a road, tramway, or railway as may be necessary to transport such supplies, materials or ores: *Provided*, That no such right of way shall be exercised in such a manner as to inconvenience or embarrass the owner or owners of said adjoining or adjacent claim or claims; and, *Provided* also, that the owner or owners of said adjoining or adjacent claim or claims shall be entitled to remuneration from the person or persons claiming such right of way; the amount of such remuneration and the manner of ascertaining the same to be regulated by the rules and regulations as prescribed by an act of the Territorial Legislature,

entitled An Act providing for the construction of toll roads, bridges and ferries in Arizona Territory. Approved Feb. 18, 1871.

SEC. 2. All acts and parts of acts in conflict with the provisions of this act are hereby repealed.

SEC. 3. This act shall take effect and be in force from and after its passage.

Approved March 12, 1881.

An Act to encourage mining.

Be it enacted by the Legislative Assembly of the Territory of Arizona:—

SECTION 1. That no lands taken up or held as mining claims under the laws of the United States, shall be held or used for agricultural purposes, or irrigated from any stream of water, unless there should be more water in such stream than is required or used for mining purposes; and the use of water for the purpose of irrigating such lands for agricultural purposes shall not vest in the person so using the same any right to such water, as against any subsequent appropriation for mining purposes.

SEC. 2. This act shall take effect and be in force from and after its passage.

Approved March 12, 1881.

MINING LAWS OF NEW MEXICO.

(Enacted since September 1881.)

An Act in relation to Lode Claims.

Be it enacted by the Legislative Assembly of the Territory of New Mexico:—

SECTION 1. Hereafter in actions respecting mining claims, proof must be admitted of the customs, usages or regulations established and in force in the mining district embracing such claims, and such customs, usages or regulations, when not in conflict with the laws of this Territory or the United States, must govern the decision of the action.

SEC. 2. Any person or persons claiming or staking upon the surface ground or mining claim of another who has complied with all laws, regulations and customs, shall be guilty of a misdemeanor, and upon conviction thereof shall be fined in any sum not less than ten or more than one hundred dollars, or imprisonment in the county jail for not less than ten or more than ninety days, or both, at the discretion of the court.

SEC. 3. Any person or persons who now have their stakes, monuments or notices upon the surface ground of any mining claim belonging to others, shall within sixty days from the passage of this act, remove such stakes, monuments or notices from the surface ground of such mining claim, and upon failure to do so shall be subject to the penalty set forth in section two of this act.

SEC. 4. Within sixty days after the period fixed by the United States law for doing the annual assessment upon mining claims, all persons owing or representing any mining claim or claims shall file with the county and district recorder an affidavit stating that the full amount has been expended as required by law. Such affidavit shall be signed by at least two parties disinterested in such claim or claims. Failure to file such affidavit as herein required shall be considered prima-facie evidence of abandonment of such claim or claims; and *Provided*, That the fee of each recorder shall not exceed fifty cents for each certified record.

All laws and parts of laws in conflict with this act are hereby repealed.

This act shall be in full force and effect from and after the first day of April, A. D. 1882.

Approved March 1, 1882.

HINTS ON MINERAL TESTING.

BY WALTER LEE BROWN.

Prospectors, miners and others are often unable to ascertain whether the various minerals and rocks they run across have possible values as ores of gold, silver, copper and lead.

If the specimen is very heavy, and on cutting shows a surface having a grayish metallic appearance, it may be galena (or sulphu-

ret of lead). If it is heavy, with no metallic shine, and of a yellowish color, it may be carbonate of lead. In either case, put a few drops of *nitric acid* on the rock; then, after a minute, as much water, and finally place a small piece of *iodide of potash* on the wet spot. If the rock turns a bright yellow, lead is present.

Specimens having a strong *blue* or *green* color, or with a gray metallic lustre, and hard to cut, should be tested for copper. Treat with *nitric acid*, as before; then add quite a little *ammonia water;* if the sample turns a very deep blue, copper, in some form, is in the ore.

For silver, grind a small fragment to a fine powder; put one-half in a small bottle with a little strong ammonia water; shake, cork, and let stand for some hours; pour off the solution, and add an equal quantity of nitric acid. If the liquid becomes milky, or a curdy mass forms in it, there is chloride of silver in the ore. The other half is to be heated in a test-tube with nitric acid. the solution poured off, and a grain or two of common table salt added. If a curdy mass forms, which does not dissolve in boiling water (but does dissolve in ammonia) and turns dark on exposure to light, silver is present.

Gold can be proven with certainty only by "panning" or assaying. To assay for silver and gold, in brief: Grind ore, in a mortar, *very* fine; weigh 45 grains of it; next weigh 450 grains of granulated lead, divide in halves; put one-half in a scorifier, and mix with it the ore; place the other half on top, and add a piece of borax glass as large as a pea; heat in a furnace, in a muffle, till everything in the scorifier is melted, and no vapors of lead arise from it; take out, cool, break scorifier, hammer slag from button, which place in a cupel in the muffle, and heat till the lead has been driven off; weigh bead left on cupel, equals gold and silver; put in a test-tube and heat with nitric acid to dissolve silver; pour off acid and wash with hot water; take out gold, dry, and weigh; first weight, less second, equals silver; each result, multiplied by ten, equals number of ounces (very nearly) per ton of the precious metal contained in the ore.

For further information, see the various works on mineralogy, blow-pipe analysis, and assaying.

GLOSSARY.

Adit—A level, a horizontal drift or passage from the surface into a mine.

Amalgam—The mechanical combination of quicksilver with gold or silver.

Apex—the top or highest point of mineral.

Argentiferous—Containing Silver.

Assay—To test ores by chemical or blow pipe examination.

Auriferous—Containing gold.

Bed—A horizontal seam or deposit of mineral.

Blende—An ore of zinc, consisting of zinc and sulphur.

Bonanza—Fair weather; a mine is said to be *en bonanza* when it is yielding a profit.

Breast—The face of a tunnel or drift.

Cap—A vein is in the "cap" when it is much contracted.

Carbonates—Soft carbonates; salts containing carbonic acid, with a base of lead. Hard carbonates; the same with iron for a base.

Cheek—The side or wall of a vein.

Chimneys—The richer spots in lodes as distinguished from poorer ones.

Cinnabar—Sulphuret of mercury.

Claim—The space of ground located and worked under the laws.

Chlorides—A compound of chlorine and silver.

Color—A particle of gold in the pan.

Contact—A touching meeting or junction of two substances, as rocks.

Contact vein—A vein along the contact plane of, or between two dissimilar rock masses.

Country rock—The rock masses on each side of a vein.

Course of vein—Along its length (see *Strike.*)

Crevice—A narrow opening, resulting from a split or crack; a fissure.

Cribbing—The timber or plank lining of a shaft; the confining of the wall rock.

Cropping out—The rising of layers of rock to the surface.

Cross cut—A level driven across the course of a vein.

Cut—To intersect a vein; open cut, a level without a covering driven across the course of a vein.

Dead Work—The development of a mine preparatory to stoping.

Diggings—Name applied to placers being worked.

Dip—The slope, pitch or angle which a vein makes with the plane of the horizon.

Drift—A horizontal passage underground.

Dump—A place for deposit of tailings, or waste rock.

Dike—A wall-like mass of non-mineral matter filling fissures.

Face—The end of a drift or tunnel.

Fault—A displacement of strata or veins so that they are not continuous.

Feeder—A small vein joining a larger one.

Fissure vein—A fissure or crack in the earth's crust filled with mineral matter.

Float—Loose rock or masses of ore.

Foot wall—The layer of rock immediately under the vein.

Forfeiture—A failure to comply with the laws, prescribing the quantity of work.

Galena—Lead ore; sulphur and lead.

Gangue—The mass of substance filling the vein and carrying the ore.

Gash vein—A vein wide above and narrow below.

Grub stake—Outfitting a prospector on a bargain to share his discoveries.

Hanging wall—The layer of rock or wall over a lode.

Heading—The vein above the drift.

Headings—In placer mining, the mass or gravel above the head of sluice.

Horse—A mass of rock matter occurring in or between the branches of a vein.

Hydraulicing—Washing down a placer claim by the use of hose or "giant nozzle."

Impregnation—Metallic deposits having undefined limits and form.

In place—A vein or lode inclosed on both sides by fixed and immovable rock.

Jump—To take forcible possession of a claim ; to re-locate abandoned property,

Lagging—The timber over and upon the sides of a drift.

Lead—See lode.

Length—A certain portion of the vein when taken on a horizontal line.

Level—A horizontal passage or drift into a mine from a shaft.

Lode—Aggregations of mineral matter containing ores in fissures.

Matrix—The rock, or earthy matter containing a mineral or metallic ore.

Metallurgy—The science of the reduction of ores.

Mill-run—The return from a quantity of ore after reduction.

Miner's inch—A local unit for the measurement of water supplied to hydraulic miners. It is the amount of water flowing under a certain head through one square inch of the total section of a certain opening, for a certain number of hours daily. All these conditions vary at different localities, and are usually regulated by Statute. For Colorado, see Gen. Stat. 1883, §3472.

Ores—Compounds of metals with oxygen, sulphur, arsenic, etc.

Outcrop—That portion of a vein appearing at the surface.

Placer—A gravelly place where gold is found; includes all forms of mineral deposits excepting veins in place. Sec. 2329, Rev. Stat. United States.

Pocket—A rich spot in a vein or deposit.

Prospecting—Searching for new deposits, also preliminary explorations to test the value of lodes or placers.

Pyrites—Sulphide of iron or copper.

Quicksilver—Mercury, used in sluices to catch gold.

Riffle blocks—Wooden or iron blocks set on end in a sluice, with spaces between for catching gold.

Selvage—Thin band of earth matter between the vein and walls.

Shaft—A well-like excavation in the earth.

Shift—The time for a miner's work, in one day or night.

Silver glance—An ore which when pure contains 87 per cent. silver and 13 per cent. sulphur.

Sluices—Boxes joined together set with riffle blocks, through which is washed auriferous earth.

Smelting—Reducing the ore in furnaces to metals, by melting.

Stamps—Machines for crushing ore.

Stope—One of a series of steps, into which the upper surface of an excavation is cut; to excavate in the form of steps above a drift.

Stoping—The act of stoping or breaking down the surface of an excavation with a pick.

Strata—A series of beds of rock.

Strike—The extension of a lode in a horizontal direction.

Stulls—A frame work covered with timber or planks, to support rubbish in working a stope.

Sump—That part of the shaft below the platform used for receiving water.

Tailings—The refuse matter discharged from the end of a sluice.

Tunnel—A level driven at right angles to the vein, which its object is to reach.

Vein—The whole mass of mineral matter in fissures of rocks.

Walls—The sides next to a lode

Whim—A machine for raising ores and refuse.

Winze—A shaft sunk from one level to another.

INDEX TO SUPPLEMENT.

PAGE.

ADVERSE PROCEEDINGS—
U. S. Stat. (amendments) III

AMENDMENTS—
to U. S. Stat. . . . . III, IV

ANNUAL EXPENDITURE—
how estimated I
on claims held in common . . . . . I, IV
by co-owners I
on placer claims IV

ARIZONA—
laws of XII

CITIZENSHIP—
proof of, U. S. Stat. (amendment) IV

CO-OWNERS—
expenditure by I
forfeiture by one of several I

GLOSSARY XVI

INTERSECTING VEINS VI

LODE—
within placer V

MILL SITES—
location of VI
patent for VI

MINERAL TESTING—
hints on XIV

MINER'S LIEN—
Stat. of Colorado VIII

MINING PARTNERSHIP—
what constitutes II
powers of members of II

NEW MEXICO—
laws of XIII

PATENTS—
effect of II
application for, U. S. Stat. amendment IV
prior leins not impaired by II
limited to one lode claim II
may include several placer claims V
cost of II

TIMBER ON MINING CLAIMS VII

WATER RIGHTS VII